

Chapter 78.52 RCW
OIL AND GAS CONSERVATION

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RCW 78.52.001 Declaration of purpose. It is hereby declared to be in the public interest to foster, encourage, and promote the exploration, development, production, and utilization of oil and gas in the state in such manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such manner as to assure that the maximum economic recovery of oil and gas may be obtained and the rights of owners thereof fully protected; to conduct such oil and gas operations in a manner that will maintain a safe and healthful environment for the people of Washington and protect the state's natural resources; and to encourage, authorize, and provide for cycling, recycling, pressure maintenance and secondary recovery operations in order that the maximum economic recovery of oil and gas may be obtained to the end that landowners, royalty owners, producers, and the general public may realize and enjoy the greatest possible benefits from these vital resources. [1983 c 253 § 1; 1951 c 146 § 1.]

RCW 78.52.010 Definitions. For the purposes of this chapter, unless the text otherwise requires, the following terms shall have the following meanings:

(1) "Certificate of clearance" means a permit prescribed by the department for the transportation or the delivery of oil, gas, or product.

(2) "Department" means the department of natural resources.

(3) "Development unit" means the maximum area of a pool which may be drained efficiently and economically by one well.

(4) "Division order" means an instrument showing percentage of royalty or rental divisions among royalty owners.

(5) "Fair and reasonable share of the production" means, as to each separately-owned tract or combination of tracts, that part of the authorized production from a pool that is substantially in the proportion that the amount of recoverable oil or gas under the development unit of that separately-owned tract or tracts bears to the recoverable oil or gas or both in the total of the development units in the pool.

(6) "Field" means the general area which is underlaid by at least one pool and includes the underground reservoir or reservoirs containing oil or gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; however, "field," unlike "pool," may relate to two or more pools.

(7) "Gas" means all natural gas, all gaseous substances, and all other fluid or gaseous hydrocarbons not defined as oil in subsection (12) of this section, including but not limited to wet gas, dry gas, residue gas, condensate, and distillate, as those terms are generally understood in the petroleum industry.

(8) "Illegal oil" or "illegal gas" means oil or gas that has been produced from any well within the state in violation of this chapter or any rule or order of the department.

(9) "Illegal product" means any product derived in whole or part from illegal oil or illegal gas.

(10) "Interested person" means a person with an ownership, basic royalty, or leasehold interest in oil or gas within an existing or proposed development unit or unitized pool.

(11) "Lessee" means the lessee under an oil and gas lease, or the owner of any land or mineral rights who has the right to conduct or carry on any oil and gas development, exploration and operation thereon, or any person so operating for himself, herself, or others.

(12) "Oil" means crude petroleum, oil, and all hydrocarbons, regardless of gravity, that are in the liquid phase in the original reservoir conditions and are produced and recovered at the wellhead in liquid form.

(13) "Operator" means the person who operates a well or unit or who has been designated or accepted by the owners to operate the well or unit, and who is responsible for compliance with the department's rules and policies.

(14) "Owner" means the person who has the right to develop, operate, drill into, and produce from a pool and to appropriate the oil or gas that he or she produces therefrom, either for that person or for that person and others.

(15) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or representative of any kind and includes any governmental or political subdivision or any agency thereof.

(16) "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 such that the accumulations of oil or gas are not common with each other is considered a separate pool and is covered by the term "pool" as used in this chapter.

(17) "Pooling" means the integration or combination of two or more tracts into an area sufficient to constitute a development unit of the size for one well as prescribed by the department.

(18) "Product" means any commodity made from oil or gas.

(19) "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 without causing waste his or her fair and reasonable share of the oil and gas in this tract or tracts or its equivalent.

(20) "Royalty" means a right to or interest in oil or gas or the value from or attributable to production, other than the right or interest of a lessee, owner, or operator, as defined herein. Royalty includes, but is not limited to the basic royalty in a lease, overriding royalty, and production payments. Any such interest may be referred to in this chapter as "royalty" or "royalty interest." As used in this chapter "basic royalty" means the royalty reserved in a lease. "Royalty owner" means a person who owns a royalty interest.

(21) "Supervisor" means the state oil and gas supervisor.

(22) "Unitization" means the operation of all or part of a field or reservoir as a single entity for operating purposes.

(23) "Waste" in addition to its ordinary meaning, means and includes:

(a) "Physical waste" as that term is generally understood in the petroleum industry;

(b) The inefficient, excessive, or improper use of, or unnecessary dissipation of, reservoir energy, and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well in a manner which results or is probable to result in reducing the quantity of oil or gas to be recovered from any pool in this state under operations conducted in accordance with prudent and proper practices or that causes or tends to cause unnecessary wells to be drilled;

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

(d) The production of oil or gas in such manner as to cause unnecessary water channeling, or coning;

(e) The operation of an oil well with an inefficient gas-oil ratio;

(f) The drowning with water of any pool or part thereof capable of producing oil or gas, except insofar as and to the extent authorized by the department;

(g) Underground waste;

(h) The creation of unnecessary fire hazards;

(i) The escape into the open air, from a well producing oil or gas, of gas in excess of the amount which is reasonably necessary in the efficient development or production of the well;

(j) The use of gas for the manufacture of carbon black, except as provided in RCW 78.52.140;

(k) Production of oil and gas in excess of the reasonable market demand;

(l) The flaring of gas from gas wells except that which is necessary for the drilling, completing, or testing of the well; and

(m) The unreasonable damage to natural resources including but not limited to the destruction of the surface, soils, wildlife, fish, or aquatic life from or by oil and gas operations. [1994 sp.s. c 9 § 809; 1983 c 253 § 2; 1951 c 146 § 3.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.025 Hearings and meetings of department. The department shall hold hearings or meetings at such times and places as may be found by the department to be necessary to carry out its duties. The department may establish its own rules for the conduct of public hearings or meetings consistent with other applicable law. [1994 sp.s. c 9 § 810; 1983 c 253 § 3; 1951 c 146 § 5. Formerly RCW 78.52.060.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.030 Employment of personnel. The department shall employ all personnel necessary to carry out the provisions of this chapter. [1994 sp.s. c 9 § 811; 1951 c 146 § 6.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.031 Conduct of hearings—Evidence. The department may subpoena witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it. No person shall be excused from attending and testifying, or from producing books, papers, and records before the department or a court, or from obedience to the subpoena of the department or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture: PROVIDED, That nothing herein contained shall be construed as requiring any person to produce any books, papers, or records, or to testify in response to any inquiry not pertinent to some question lawfully before the department or court for determination. No person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of his or her objection, he or she may be required to testify or produce evidence, documentary or otherwise before the department or court, or in obedience to its subpoena: PROVIDED, HOWEVER, That no person testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. [1994 sp.s. c 9 § 812; 1983 c 253 § 5; 1951 c 146 § 7. Formerly RCW 78.52.080.]

Severability—Headings and captions not law—Effective date—1994
sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.032 Hearing examiners. In addition to the powers and authority, either express or implied, granted to the department by virtue of the laws of this state, the department may, in prescribing its rules of order or procedure in connection with hearings or other proceedings before the department, provide for the appointment of one or more examiners to conduct a hearing or hearings with respect to any matter properly coming before the department and to make reports and recommendations to the department with respect thereto. Any employee of the department or any other person designated by the commissioner of public lands, or the supervisor when this power is so delegated, may serve as an examiner. The department shall adopt rules governing hearings to be conducted before examiners. [1994 sp.s. c 9 § 813; 1983 c 253 § 10.]

Severability—Headings and captions not law—Effective date—1994
sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.033 Failure of witness to attend or testify—Contempt. In case of failure or refusal on the part of any person to comply with a subpoena issued by the department or in case of the refusal of any witness to testify as to any matter regarding which the witness may be interrogated, any superior court in the state, upon the application of the department, may compel the person to comply with such subpoena, and to attend before the department and produce such records, books, and documents for examination, and to give his or her testimony and 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. [1994 sp.s. c 9 § 814; 1951 c 146 § 8. Formerly RCW 78.52.090.]

Severability—Headings and captions not law—Effective date—1994
sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.035 Attorney for department. The attorney general shall be the attorney for the department, but in cases of emergency, the department may call upon the prosecuting attorney of the county where the action is to be brought, or defended, to represent the department until such time as the attorney general may take charge of the litigation. [1994 sp.s. c 9 § 815; 1951 c 146 § 9. Formerly RCW 78.52.110.]

Severability—Headings and captions not law—Effective date—1994
sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.037 State oil and gas supervisor—Deputy supervisors—Employment of personnel. The department shall designate a state oil and gas supervisor who shall be charged with duties as may be delegated by the department. The department may designate one or more deputy supervisors and employ all personnel necessary including the

appointment of examiners as provided in RCW 78.52.032 to carry out this chapter and the rules and orders of the department. [1994 sp.s. c 9 § 816; 1983 c 253 § 4.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.040 Duty and powers of department—In general. The department shall administer and enforce the provisions of this chapter by the adoption of policies, and all rules, regulations, and orders promulgated hereunder, and the department has jurisdiction, power, and authority, over all persons and property, public and private, necessary to enforce effectively such duty. [1994 sp.s. c 9 § 817; 1983 c 253 § 6; 1951 c 146 § 10.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.050 Rules, regulations, and orders—Time and place of hearing—Notices. The department may make such reasonable rules, regulations, and orders as may be necessary from time to time for the proper administration and enforcement of this chapter. Unless otherwise required by law or by this chapter or by rules of procedure made under this chapter, the department may make such rules, regulations, and orders, after notice, as the basis therefor. The notice may be given by publication in some newspaper of general circulation in the state in a manner and form which may be prescribed by the department by general rule. The public hearing shall be at the time and in the manner and at the place prescribed by the department, and any person having any interest in the subject matter of the hearing shall be entitled to be heard. In addition, written notice shall be mailed to all interested persons who have requested, in writing, notice of department hearings, rulings, policies, and orders. The department shall establish and maintain a mailing list for this purpose. Substantial compliance with these mailing requirements is deemed compliance with this section. [1994 sp.s. c 9 § 818; 1983 c 253 § 7; 1951 c 146 § 11.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.070 Hearing upon petition—Time for action. Any interested person shall have the right to have the department call a hearing for the purpose of taking action with respect to any matter within the jurisdiction of the department by filing a verified written petition therefor, which shall state in substance the matter and reasons for and nature of the action requested. Upon receipt of any such request the department, if in its judgment a hearing is warranted and justifiable, shall promptly call a hearing thereon, and after such hearing, and with all convenient speed, and in any event within twenty days after the conclusion of such hearing, shall take such action with regard to the subject matter thereof as it may deem appropriate. [1994 sp.s. c 9 § 819; 1951 c 146 § 12.]

Severability—Headings and captions not law—Effective date—1994
sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.100 Records—Copies as evidence—Copies to be furnished. All rules, regulations, policies, and orders of the department, all petitions, copies of all notices and actions with affidavits of posting, mailing, or publications pertaining thereto, all findings of fact, and transcripts of all hearings shall be in writing and shall be entered in full by the department in the permanent official records of the office of the commissioner of public lands and shall be open for inspection at all times during reasonable office hours. A copy of any rule, regulation, policy, order, or other official records of the department, certified by the commissioner of public lands, shall be received in evidence in all courts of this state with the same effect as the original. The department is hereby required to furnish to any person upon request, copies of all rules, regulations, policies, orders, and amendments thereof. [1994 sp.s. c 9 § 820; 1983 c 253 § 8; 1951 c 146 § 13.]

Severability—Headings and captions not law—Effective date—1994
sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.120 Drilling permit required—Notice. Any person desiring or proposing to drill any well in search of oil or gas, before commencing the drilling of any such well, shall apply to the department upon such form as the department may prescribe, and shall pay to the state treasurer a fee of the following amounts for each application:

- (1) For each well the estimated depth of which is three thousand five hundred feet or less, two hundred fifty dollars;
- (2) From three thousand five hundred one feet to seven thousand feet, five hundred dollars;
- (3) From seven thousand one feet to twelve thousand feet, seven hundred fifty dollars; and
- (4) From twelve thousand one feet and deeper, one thousand dollars.

In addition, as pertains to the tract upon which the well is proposed to be located, the applicant must notify the surface landowner, the landowner's tenant, and other surface users in the manner provided by regulations of the department that a drilling permit has been applied for by furnishing each such surface landowner, tenant, and other users with a copy of the application concurrent with the filing of the application. Within fifteen days of receipt of the application, each such surface landowner, the landowner's tenant, and other surface users have the right to inform the department of objections or comments as to the proposed use of the surface by the applicant, and the department shall consider the objections or comments.

The drilling of any well is prohibited until a permit is given and such fee has been paid as provided in this section. The department may prescribe that the said form indicate the exact location of such well, the name and address of the owner, operator, contractor, driller, and any other person responsible for the conduct of drilling operations, the proposed depth of the well, the elevation of the well

above sea level, and such other relevant and reasonable information as the department may deem necessary or convenient to effectuate the purposes of this chapter.

The department shall issue a permit if it finds that the proposed drilling will be consistent with this chapter, the rules and orders adopted under it, and is not detrimental to the public interest. The department shall impose conditions and restrictions as necessary to protect the public interest and to ensure compliance with this chapter, and the rules and orders adopted by the department. A person shall not apply to drill a well in search of oil or gas unless that person holds an ownership or contractual right to locate and operate the drilling operations upon the proposed drilling site. A person shall not be issued a permit unless that person prima facie holds an ownership or contractual right to drill to the proposed depth, or proposed horizon. Proof of prima facie ownership shall be presented to the department. [1994 sp.s. c 9 § 821; 1983 c 253 § 11; 1951 c 146 § 14.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.125 Environmental impact statement required when drilling affects surface waters of the state—Drilling may be denied, when. Any person desiring or proposing to drill any well in search of oil or gas, when such drilling would be conducted through or under any surface waters of the state, shall prepare and submit an environmental impact statement upon such form as the department of ecology shall prescribe at least one hundred and twenty days prior to commencing the drilling of any such well. Within ninety days after receipt of such environmental statement the department of ecology shall prepare and submit to the department of natural resources a report examining the potential environmental impact of the proposed well and recommendations for department action thereon. If after consideration of the report the department determines that the proposed well is likely to have a substantial environmental impact the drilling permit for such well may be denied.

The department shall require sufficient safeguards to minimize the hazards of pollution of all surface and ground waters of the state. If safeguards acceptable to the department cannot be provided the drilling permit shall be denied. [1994 sp.s. c 9 § 822; 1971 ex.s. c 180 § 8.]

Reviser's note: The definitions of RCW 90.56.010 apply to this section. Funds for the purposes of carrying out this section are provided from the coastal protection fund, RCW 90.48.390 and 90.48.400. The authority and enforcement of rules pertaining to this section are covered in RCW 90.56.050 and 90.56.900.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Short title—Construction—1971 ex.s. c 180: See RCW 90.48.906 and 90.56.900.

RCW 78.52.130 Waste prohibited. Waste of oil and gas, as defined in this chapter, is prohibited. [1951 c 146 § 15.]

RCW 78.52.140 Carbon black and carbon products—Permit required. The use of gas from a well producing gas only, or from a well which is primarily a gas well, for the manufacture of carbon black or similar products predominantly carbon, is declared to constitute waste prima facie, and such gas well shall not be used for any such purpose unless it is clearly shown, at a public hearing to be held by the department, on application of the person desiring to use such gas, that waste would not take place by the use of such gas for the purpose or purposes applied for, and that gas which would otherwise be lost is not available for such purpose or purposes, and that the gas to be used cannot be used for a more beneficial purpose, such as for light or fuel purposes, except at prohibitive cost, and that it would be in the public interest to grant such permit. If the department finds that the applicant has clearly shown a right to use such gas for the purpose or purposes applied for, it shall issue a permit upon such terms and conditions as may be found necessary in order to permit the use of the gas, and at the same time require compliance with the intent of this section. [1994 sp.s. c 9 § 823; 1951 c 146 § 16.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.150 Investigations authorized. The department shall make such investigations as it may deem proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the department. [1994 sp.s. c 9 § 824; 1951 c 146 § 17.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.155 Investigations—Powers and duties. (1) The department shall make investigations as necessary to carry out this chapter.

(2) The department shall require:

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

(b) The making and filing of well logs, core samples, directional surveys, and reports on well locations, drilling, and production;

(c) The testing of oil and gas wells;

(d) The drilling, casing, operating, and plugging of wells in such a manner as to prevent the escape of oil or gas out of the casings, or out of one pool into another, the intrusion of water into an oil or gas pool, and the pollution of freshwater supplies by oil, gas, or salt water and to prevent blowouts, cavings, see pages, and fires;

(e) The furnishing of adequate security acceptable to the department, conditioned on the performance of the duty to plug each dry or abandoned well, the duty to reclaim and clean-up well drilling sites, the duty to repair wells causing waste, the duty to comply with

all applicable laws and rules adopted by the department, orders of the department, all permit conditions, and this chapter;

(f) The operation of wells with efficient gas-oil and water-oil ratios and may fix these ratios and limit production from wells with inefficient gas-oil or water-oil ratios;

(g) The production of oil and gas from wells be accurately measured by means and upon standards prescribed by the department, and that every person who produces, sells, purchases, acquires, stores, transports, treats, or processes oil or gas in this state keeps and maintains for a period of five years within this state complete and accurate records thereof, which records shall be available for examination by the department or its agents at all reasonable times, and that every person file with the department such reports as it may prescribe with respect to the oil or gas; and

(h) Compliance with all applicable laws and rules of this state.

(3) The department shall regulate:

(a) The drilling, producing, locating, spacing, and plugging of wells and all other operations for the production of oil or gas;

(b) The physical, mechanical, and chemical treatment of wells, and the perforation 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 producing formations;

(d) Disposal of saltwater and oil field brines;

(e) The storage, processing, and treatment of natural gas and oil produced within this state; and

(f) Reclamation and clean-up of all well sites and any areas directly affected by the drilling, production, operation, and plugging of oil and gas wells.

(4) The department may limit and prorate oil and gas produced in this state and may restrict future production of oil and gas from any pool in such amounts as will offset and compensate for any production determined by the department to be in excess of or in violation of "oil allowable" or "gas allowable."

(5) The department shall classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

(6) The department shall regulate oil and gas exploration and drilling activities so as to prevent or remedy unreasonable or excessive waste or surface destruction. [1994 sp.s. c 9 § 825; 1983 c 253 § 9.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.200 Development units authorized for known pools.

When necessary to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights including those of royalty owners, the department, upon its own motion or upon application of interested persons, shall establish development units covering any known pool. Development units shall be of uniform size and shape for the entire pool unless the department finds that it must make an exception due to geologic, geographic, or other factors. When necessary, the department may divide any pool into zones and establish development units for each zone, which units may differ in size and

shape from those established in any other zone. [1994 sp.s. c 9 § 826; 1983 c 253 § 12; 1951 c 146 § 22.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.205 Development units to be prescribed for pool after discovery—Temporary development units. Within sixty days after the discovery of oil or gas in a pool not then covered by an order of the department, a hearing shall be held and the department shall issue an order prescribing development units for the pool. If sufficient geological or other scientific data from drilling operations or other evidence is not available to determine the maximum area that can be efficiently and economically drained by one well, the department may establish temporary development units to ensure the orderly development of the pool pending availability of the necessary data. A temporary order shall continue in force for a period of not more than twenty-four months at the expiration of which time, or upon the petition of an affected person, the department shall require the presentation of such geological, scientific, drilling, or other evidence as will enable it to determine the proper development units in the pool. During the interim period between the discovery and the issuance of the temporary order, permits shall not be issued for the drilling of direct offsets to a discovery well. [1994 sp.s. c 9 § 827; 1983 c 253 § 13.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.210 Development units—Size and shape. (1) The size and the shape of any development units shall be such as will result in the efficient and economical development of the pool as a whole, and the size shall not be smaller than the maximum area that can be efficiently and economically drained by one well as determined by competent geological, geophysical, engineering, drilling, or other scientific testimony, data, and evidence. The department shall fix a development unit of not more than one hundred sixty acres for any pool deemed by the department to be an oil reservoir, or of six hundred forty acres for any pool deemed by the department to be a gas reservoir, plus a ten percent tolerance in either case to allow for irregular sections. The department may, at its discretion, after notice and hearing, establish development units for oil and gas in variance of these limitations when competent geological, geophysical, engineering, drilling, or other scientific testimony, data, and evidence is presented and upon a finding that one well can efficiently and economically drain a larger or smaller area and is justified because of technical, economic, environmental, or safety considerations.

(2) The department may establish development units of different sizes or shapes for different parts of a pool or may grant exceptions to the size or shapes of any development unit or units. Where development units of different sizes or shapes exist in a pool, the department shall, if necessary, make such adjustments to the allowable production from the well or wells drilled thereon so that each

operator in each development unit will have a reasonable opportunity to produce or receive his or her just and equitable share of the production. [1994 sp.s. c 9 § 828; 1983 c 253 § 14; 1951 c 146 § 23.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.220 Development units—Location of well. An order establishing development units for a pool shall specify the size and shape of each area and the location of the permitted well thereon in accordance with a reasonable uniform spacing plan. Upon application and after notice and a hearing, 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, the department may enter an order permitting the well to be drilled pursuant to permit at a location other than that prescribed by such development order; however, the department shall include in the order suitable provisions to prevent the production from the development unit of more than its just and equitable share of the oil and gas in the pool. [1994 sp.s. c 9 § 829; 1983 c 253 § 15; 1951 c 146 § 24.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.230 Development units—Order must cover entire pool—Modifications. An order establishing development 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 areas determined to be underlaid by such pool. When the department determines that it is necessary for the prevention of waste, or to avoid the drilling of unnecessary wells, or to protect correlative rights, an order establishing development units in a pool may be modified by the department to increase or decrease the size of development units in the pool or to permit the drilling of additional wells on a reasonably uniform plan in the pool. [1994 sp.s. c 9 § 830; 1983 c 253 § 16; 1951 c 146 § 25.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.240 Development units—Pooling of interests. When two or more separately-owned tracts are embraced within a development unit, or when there are separately owned interests in all or a part of the development unit, then the owners and lessees thereof may pool their interests for the development and operation of the development unit. In the absence of this voluntary pooling, the department, upon the application of any interested person, shall enter an order pooling all interests, including royalty interests, in the development unit for the development and operation thereof. Each such pooling order shall be made after notice and hearing. The applicant or applicants shall have the burden of proving that all reasonable efforts have been

made to obtain the consent of, or to reach agreement with, other owners. [1994 sp.s. c 9 § 831; 1983 c 253 § 17; 1951 c 146 § 26.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.245 Pooling order—Allocation of production. A pooling order shall be upon terms and conditions that are fair and reasonable and that afford to each owner and royalty owner his or her fair and reasonable share of production. Production shall be allocated as follows:

(1) For the purpose of determining the portions of production owned by the persons owning interests in the pooled unit, the production shall be allocated to the respective tracts within the unit in the proportion that the surface acres in each tract bear to the number of surface acres included in the entire unit.

(2) Notwithstanding subsection (1) of this section, if the department finds that allocation on a surface acreage basis does not allocate to each tract its fair share, the department shall allocate the production so that each tract will receive its fair share. [1994 sp.s. c 9 § 832; 1983 c 253 § 18.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.250 Pooled interests in well in development unit—Allocation of costs—Rights of owners. (1) Each such pooling order shall make provision for the drilling and operation of a well on the development unit, and for the payment of the reasonable actual cost thereof by the owners of interests required to pay such costs in the development unit, plus a reasonable charge for supervision and storage facilities. Costs associated with production from the pooled unit shall be allocated in the same manner as is production in RCW 78.52.245. In the event of any dispute as to such costs the department shall determine the proper costs.

(2) As to each owner who fails or refuses to agree to bear his or her proportionate share of the costs of the drilling and operation of the well, the order shall provide for reimbursement of those persons paying for the drilling and operation of the well of the nonconsenting owner's share of the costs from, and only from, production from the unit representing that person's interest, excluding royalty or other interests not obligated to pay any part of the cost thereof. The department may provide that the consenting owners shall own and be entitled to receive all production from the well after payment of the royalty as provided in the lease, if any, applicable to each tract or interest, and obligations payable from production, until the consenting owners have been paid the amount due under the terms of the pooling order or order settling any dispute.

The order shall determine the interest of each owner in the unit and shall provide that each consenting owner is entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the owner's interest in the unit, and, unless the owner has agreed otherwise, his or her proportionate part of the nonconsenting owner's share of the production until costs are

recovered as provided in this subsection. Each nonconsenting owner is entitled to receive, subject to royalty or similar obligations, the share of production from the well applicable to the owner's interest in the unit after the consenting owners have recovered from the nonconsenting owner's share of production the following:

(a) In respect to every such well, one hundred percent of the nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections, including but not limited to, stock tanks, separators, treaters, pumping equipment, and piping, plus one hundred percent of the nonconsenting owner's share of the cost of operation of the well, commencing with first production and continuing until the consenting owners have recovered these costs, with the intent that the nonconsenting owner's share of these costs and equipment will be that interest which would have been chargeable to the nonconsenting owner had he or she initially agreed to pay his or her share of the costs of the well from the beginning of the operation;

(b) One hundred fifty percent of that portion of the costs and expenses of staking the location, well site preparation, rights-of-way, rigging-up, drilling, reworking, deepening or plugging back, testing, and completing, after deducting any cash contributions received by the consenting owners, and also one hundred fifty percent of that portion of the cost of equipment in the well, up to and including the wellhead connections; and

(c) If there is a dispute regarding the costs, the department shall determine the proper costs and their allocation among working interest owners after due notice to interested parties and a hearing on the costs.

(3) The operator of a well under a pooling order in which there are nonconsenting owners shall furnish the nonconsenting owners with monthly statements of all costs incurred, together with the quantity of oil or gas produced, and the amount of proceeds realized from the sale of this production during the preceding month. If and when the consenting owners recover from a nonconsenting owner's relinquished interest the amounts provided for in subsection (2) of this section, the relinquished interest of the nonconsenting owner shall automatically revert to him or her, and the nonconsenting owner shall own the same interest in the well and the production from it and be liable for the further costs of the operation as if he or she had participated in the initial drilling and operation.

(4) A nonconsenting owner of a tract in a development unit which is not subject to any lease or other contract for the development thereof for oil and gas shall elect within fifteen days of the issuance of the pooling order or such further time as the department shall, in the order, allow:

(a) To be treated as a nonconsenting owner as provided in subsections (2) and (3) of this section and is deemed to have a basic landowners' royalty of one-eighth, or twelve and one-half percent, of the production allocated to the tract, unless a higher basic royalty has been established in the development unit. If a higher royalty has been established, then the nonconsenting owner of a nonleased tract shall receive the higher basic royalty. This presumed royalty shall exist only during the time that costs and expenses are being recovered under subsection (2) of this section, and is intended to assure that the owner of a nonleased tract receive a basic royalty free of all costs at all times. Notwithstanding anything herein to the contrary, the owner shall at all times retain his or her entire ownership of the property, including the right to execute an oil and gas lease on any

terms negotiated, and be entitled to all production subject to subsection (2) of this section; or

(b) To grant a lease to the operator at the current fair market value for that interest for comparable leases or interests at the time of the commencement of drilling; or

(c) To pay his or her pro rata share of the costs of the well or wells in the development unit and receive his or her pro rata share of production, if any.

A nonconsenting owner who does not make an election as provided in this subsection is deemed to have elected to be treated under (a) of this subsection. [1994 sp.s. c 9 § 833; 1983 c 253 § 19; 1951 c 146 § 27.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.253 Pooling agreement, offer to pool, pooling order—Fairness to nonconsenting, unleased owners. A pooling agreement, offer to pool, or pooling order is not considered fair and reasonable as applied to nonconsenting, unleased owners only, if it provides for an operating agreement containing any of the following provisions:

- (1) Preferential right of the operator to purchase mineral interests in the unit;
- (2) A call on or option to purchase production from the unit;
- (3) Operating charges that include any part of district or central office expense other than reasonable overhead charges; or
- (4) Prohibition against nonoperators questioning the operation of the unit. [1983 c 253 § 20.]

RCW 78.52.255 Operations on development unit deemed operations on each tract—Production allocated to tract deemed produced from each tract—Shut-in well considered on each tract—Lease on part of tract excluded from unit. (1) Operations incident to the drilling of a well upon any portion of a development unit covered by a pooling order shall be deemed, for all purposes, the conduct of such operations upon each separately-owned tract in the development unit by the several owners thereof. That portion of the production allocated to each separately-owned tract included in a development unit covered by a pooling order shall, when produced, be deemed for all purposes, including the payment of royalty, to have been produced from each separately-owned tract by a well drilled thereon. If an oil or gas well on a pooled unit is shut-in, it shall be considered that the shut-in well is on each separately-owned tract in the pooled unit.

(2) If only part of the tract is included in the unit, operations on, production from, or a shut-in well on the unit shall maintain an oil and gas lease on the tract as to the part excluded from the unit only if the lease would be maintained had the unit been created voluntarily under the lease. [1983 c 253 § 21.]

RCW 78.52.257 Dissolution of pooling order—Interests covered by terminated lease—Modification or termination of pooling order—Extension of dissolution of pooling order. (1) An order pooling a development unit shall automatically dissolve:

(a) One year after its effective date if there has been no production of commercial quantities or drilling operations on lands within the unit;

(b) Six months after completion of a dry hole on the unit; or

(c) Six months after cessation of production of commercial quantities from the unit, unless, prior to the expiration of such six-month period, the operator shall, in good faith, commence drilling or reworking operations in an effort to restore production.

(2) Upon the termination of a lease pooled by order of the department under authority granted in this chapter, interests covered by the lease are considered pooled as unleased mineral interests.

(3) Any party to a pooling order is entitled, after due notice to all parties, to a hearing to modify or terminate a previously entered pooling order upon presenting new evidence showing that the previous determination of reservoir conclusions are substantially incorrect.

(4) The department, after notice and hearing, may grant additional time, for good cause shown, before a pooling order is automatically dissolved as provided in subsection (1) of this section. In no case may such an extension be longer than six months. [1994 sp.s. c 9 § 834; 1983 c 253 § 22.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.260 "Wildcat" or "exploratory" well data confidential.

Whenever the department requires the making and filing of well logs, directional surveys, or reports on the drilling of, subsurface conditions found in, or reports with respect to the substance produced, or capable of being produced from, a "wildcat" or "exploratory" well, as those terms are used in the petroleum industry, such logs, surveys, reports, or information shall be kept confidential by the department for a period of one year, if at the time of filing such logs, surveys, reports, or other information, the owner, lessee, or operator of such well requests that such information be kept confidential: PROVIDED, HOWEVER, That the department may divulge or use such information in a public hearing or suit when it is necessary for the enforcement of the provisions of this chapter or any rule, regulation, or order made hereunder. [1994 sp.s. c 9 § 835; 1951 c 146 § 28.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.270 Limitation of production to "oil allowable"—

Proration. Whenever the total amount of oil which all of the pools in this state can currently produce in accordance with good operating practices, exceeds the amount reasonably required to meet the reasonable market demand, the department shall limit the oil which may be currently produced in this state to an amount, designated the "oil allowable." The department shall then prorate this "oil allowable" among the pools on a reasonable basis, avoiding undue discrimination among the pools, and so that waste will be prevented. In determining the "oil allowable," and in prorating such "oil allowable" among the pools in the state, the department shall take into account the

producing conditions and other relevant facts with respect to such pools, including the separate needs for oil and gas, and separate needs for oil of particular kinds or qualities, and shall formulate rules setting forth standards or a program for the determination of the "oil allowable," and shall prorate the "oil allowable" in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or program shall be applied to such pools or areas so that as far as practicable a uniform program will be followed: PROVIDED, HOWEVER, That if the amount prorated to a pool as its share of the "oil allowable" is in excess of the amount which the pool can efficiently produce currently, then the department shall prorate to such pool the maximum amount which can be efficiently produced currently without waste. [1994 sp.s. c 9 § 836; 1951 c 146 § 29.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.280 Determining market demand—No undue discrimination in proration of "allowable." The department shall not be required to determine the reasonable market demand applicable to any single pool of oil except in relation to all pools producing oil of similar kind and quality and in relation to the reasonable market demand. The department shall prorate the "allowable" in such manner as will prevent undue discrimination against any pool or area in favor of another or others resulting from selective buying or nomination by purchasers. [1994 sp.s. c 9 § 837; 1951 c 146 § 30.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.290 Limitation of production to "gas allowable"—Proration. Whenever the total amount of gas which all of the pools in this state can currently produce in accordance with good operating practice exceeds the amount reasonably required to meet the reasonable market demand, the department shall limit the gas which may be currently produced to an amount, designated as the "gas allowable," which will not exceed the reasonable market demand for gas. The department shall then prorate the "gas allowable" among the pools on a reasonable basis, avoiding undue discrimination among the pools, and so that waste will be prevented, giving due consideration to location of pipe lines, cost of interconnecting such pipe lines, and other pertinent factors, and insofar as applicable, the provisions of RCW 78.52.270 shall be followed in determining the "gas allowable" and in prorating such "gas allowable" among the pools therein: PROVIDED, HOWEVER, That in determining the reasonable market demand for gas as between pools, the department shall give due regard to the fact that gas produced from oil pools is to be regulated in a manner which will protect the reasonable use of gas energy for oil production and promote the most or maximum efficient recovery of oil from such pools. [1994 sp.s. c 9 § 838; 1951 c 146 § 31.]

Severability—Headings and captions not law—Effective date—1994
sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.300 Limitation of gas production from one pool.

Whenever the total amount of gas which may be currently produced from all of the pools in this state has not been limited as hereinabove provided, and the available production from any one pool containing gas only is in excess of the reasonable market demand or available transportation facilities for gas from such pool, the department shall limit the production of gas from such pool to that amount which does not exceed the reasonable market demand or transportation facilities for gas from such pool. [1994 sp.s. c 9 § 839; 1951 c 146 § 32.]

Severability—Headings and captions not law—Effective date—1994
sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.310 Proration of allowable production in pool—

Publication of orders—Emergency orders. Whenever the department limits the total amount of oil or gas which may be produced from any pool to an amount less than that which the pool could produce if no restrictions were imposed (whether incidental to, or without, a limitation of the total amount of oil which may be produced in the state) the department shall prorate the allowable production for the pool among the producers in the pool on a reasonable basis, so that each producer will have opportunity to produce or receive his or her just and equitable share, subject to the reasonable necessities for the prevention of waste, giving where reasonable, under the circumstances, to each pool with small wells of settled production, allowable production which prevents the premature abandonment of wells in the pool.

All orders establishing the "oil allowable" and "gas allowable" for this state, and all orders prorating such allowables as herein provided, and any changes thereof, for any month or period shall be issued by the department on or before the fifteenth day of the month preceding the month for which such orders are to be effective, and such orders shall be immediately published in some newspaper of general circulation printed in Olympia, Washington. No orders establishing such allowables, or prorating such allowables, or any changes thereof, shall be issued without first having a hearing, after notice, as provided in this chapter: PROVIDED, HOWEVER, When in the judgment of the department, an emergency requiring immediate action is found to exist, the department may issue an emergency order under this section which shall have the same effect and validity as if a hearing with respect to the same had been held after due notice. The emergency order permitted by this section shall remain in force no longer than thirty days, and in any event it shall expire when the order made after due notice and hearing with respect to the subject matter of the emergency order becomes effective. [1994 sp.s. c 9 § 840; 1951 c 146 § 33.]

Severability—Headings and captions not law—Effective date—1994
sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.320 Compliance with limitation or proration required.

Whenever the production of oil or gas in this state or any pool therein is limited and the "oil allowable" or "gas allowable" is established and prorated by the department as provided in RCW 78.52.310, no person shall thereafter produce from any well, pool, lease, or property more than the production which is prorated thereto. [1994 sp.s. c 9 § 841; 1951 c 146 § 34.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.330 Unit operation of separately owned tracts.

To assist in the development of oil and gas in this state and to further the purposes of this chapter, the persons owning interests in separate tracts of land, may validly agree to integrate their interests and manage, operate, and develop their land as a unit, subject to the approval of the department. [1994 sp.s. c 9 § 842; 1951 c 146 § 35.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.335 Unit operation of pools.

(1) The department shall upon the application of any interested person, or upon its own motion, hold a hearing to consider the need for the operation as a unit of one or more pools or parts of them in a field.

(2) The department may enter an order providing for the unit operations if it finds that:

(a) The unit operations are necessary for secondary recovery or enhanced recovery purposes. For purposes of this chapter secondary or enhanced recovery means that oil or gas or both are recovered by any method, artificial flowing or pumping, that may be employed to produce oil or gas, or both, through the joint use of two or more wells with an application of energy extrinsic to the pool or pools. This includes pressuring, cycling, pressure maintenance, or injections into the pool or pools of a substance or form of energy: PROVIDED, That this does not include the injection in a well of a substance or form of energy for the sole purpose of (i) aiding in the lifting of fluids in the well, or (ii) stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means;

(b) The unit operations will protect correlative rights;

(c) The operations will increase the ultimate recovery of oil or gas, or will prevent waste, or will prevent the drilling of unnecessary wells; and

(d) The value of the estimated additional recovery of oil and/or gas exceeds the estimated additional cost incident to conducting these operations.

(3) The department may also enter an order providing for unit operations, after notice and hearing, only if the department finds that there is clear and convincing evidence that all of the following conditions are met:

(a) In the absence of unitization, the ultimate recovery of oil or gas, or both, will be substantially decreased because normal production techniques and methods are not feasible and will not result in the maximum efficient and economic recovery of oil or gas, or both;

(b) The unit operations will protect correlative rights;

(c) The unit operations will prevent waste, or will prevent the drilling of unnecessary wells;

(d) There has been a discovery of a commercial oil or gas field;

and

(e) There has been sufficient exploration, drilling activity, and development to properly define the one or more pools or parts of them in a field proposed to be unitized.

(4) Notwithstanding any of the above, nothing in this chapter may be construed to prevent the voluntary agreement of all interested persons to any plan of unit operations. The department shall approve operations upon making a finding consistent with subsection (2) (b) and (c) of this section.

(5) The order shall be upon terms and conditions that are fair and reasonable and shall prescribe a plan for unit operations that includes:

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

(b) A statement of the nature of the operations contemplated;

(c) An allocation of production and costs to the separately-owned tracts in the unitized area. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no agreement, production shall be allocated in a manner calculated to ensure that each owner's correlative rights are protected, and each separately-owned tract or combination of tracts receives its fair and reasonable share of production. Costs shall be allocated on a fair and reasonable basis;

(d) A provision, if necessary, prescribing fair, reasonable, and equitable terms and conditions as to time and rate of interest for carrying or otherwise financing any person who is unable to promptly meet his or her financial obligations in connection with the unit, such carrying and interest charges to be paid as provided by the department from the person's prorated share of production;

(e) A provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the owner's interest;

(f) The time when the unit operations shall commence, the timetable for development, and the manner and circumstances under which the unit operations shall terminate; and

(g) Additional provisions which are found to be appropriate for carrying out the unit operations and for the protection of correlative rights.

(6) No order of the department providing for unit operations may become effective until:

(a) The plan for unit operations approved 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 unit operations;

(b) The plan has been approved in writing by those persons such as royalty owners, overriding royalty owners, and production payment owners, who own at least seventy-five percent of the production or proceeds thereof that will be credited to interests that are free of costs; and

(c) 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. 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 percentages of interest in the unitized 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, or within such additional period or periods of time as the department prescribes, the order will become unenforceable and shall be vacated 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, except as provided in subsection (8) of this section, providing for unit operations, but (a) if such an amendment affects only the rights and interests of the owners, the approval of the amendment by those persons who own interests that are free of costs is not required, and (b) no such amending order may change the percentage for the allocation of oil and gas as established for any separately-owned tract or combination of tracts by the original order, except with the consent of all persons owning oil and gas rights in the tract, and no such order may change the percentage for the allocation of cost as established for any separately-owned tract or combination of tracts by the original order, except with the consent of all persons owning an interest in the tract or combination of tracts. An amendment that provides for the expansion of the unit area shall comply with subsection (8) of this section.

(8) The department, by order, may provide for the unit operation of a reservoir or reservoirs or parts thereof that include a unitized area established by a previous order of the department. The order, in providing for the allocation of unit production, shall first treat the unitized area previously established as a single tract and the portion of the new unit production allocated thereto shall then be allocated among the separately-owned tracts included in the previously established unit area in the same proportions as those specified in the previous order.

(9) After the date designated by the department the unit plan shall be effective, oil and gas leases within the unit area, or other contracts pertaining to the development thereof, shall be changed only to the extent necessary to meet the requirements of the unit plan, and otherwise shall remain in full force. Operations carried on under and in accordance with the unit plan shall be regarded and considered as fulfillment of and compliance with all of the provisions, covenants, and conditions, expressed or implied, of the several oil and gas leases upon lands within the unit area, or other contracts pertaining to the development thereof, insofar as the leases or other contracts may relate to the pool or field subject to the unit plan. The amount of production apportioned and allocated under the unit plan to each separately-owned tract within the unit area, and only that amount, regardless of the location of the well within the unit area from which it may be produced, and regardless of whether it is more or less than the amount of production from the well, if any, on each separately-owned tract, shall for all purposes be regarded as production from the separately-owned tract. Lessees shall not be obligated to pay royalties or make other payments, required by the oil and gas leases or other contracts affecting each such separately-owned tract, on production in excess of that amount apportioned and allocated to the separately-owned tract under the unit plan.

(10) The portion of the unit production allocated to any tract and the proceeds from its sale are the property and income of the several persons to whom, or to whose credit, the portion and proceeds are allocated or payable under the order providing for unit operations.

(11) No division order or other contract relating to the sale, purchase, or production from a separately-owned tract or combination of tracts may be terminated by the order providing for unit operations but shall remain in force and shall apply to oil and gas allocated to the tract until terminated by an amended division order or contract in accordance with the order.

(12) Except to the extent that parties affected so agree, an order providing for unit operations shall not 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 those owners in the proportion that the expenses of unit operations are charged.

(13) After the date designated by the order of the department that a unit plan shall become effective, the designation of one or more unit operators shall be by vote of the lessees of land in the unit area, in a manner to be provided in the unit plan, and any operations in conflict with such unit plan shall be unlawful and are prohibited.

(14) A certified copy of any order of the department entered under this section is entitled to be recorded in the auditor's office in the county or counties wherein all or any portion of the unit area is located and, if recorded, constitute notice thereof to all persons. A copy of this order shall be mailed by certified mail to all interested persons.

(15) No order for unitization may be construed to allow the drilling of a well on a tract within the unit which is not leased or under contract for oil and gas exploration or production. [1994 sp.s. c 9 § 843; 1983 c 253 § 23.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.345 Ratable purchase of oil from owners or operators of pool required. Each person now or hereafter purchasing or taking for transportation oil from any owner or producer shall purchase or take ratably without discrimination in favor of any owner or operator over any other owner or producer in the same pool offering to sell his or her oil produced therefrom to that person. If the person purchasing or taking for transportation oil does not have need for all such oil lawfully produced within a pool, or if for any reason is unable to purchase all of the oil, then it shall purchase from each operator in a pool ratably, taking and purchasing the same quantity of oil from each well to the extent that each well is capable of producing its ratable portion without waste. Nothing in this section may be construed to require any owner or operator to sell his or her product to only one purchaser or to require more than one pipeline connection for each producing well. If any such purchaser or person taking oil for transportation is likewise an operator or owner, the purchaser or

person is prohibited from discriminating in favor of his or her own production, or production in which he or she may be interested, and his or her own production shall be treated as that of any other operator or owner. [1983 c 253 § 24.]

RCW 78.52.355 Ratable purchase of gas from owners or operators of pool required. Each person now or hereafter purchasing or taking for transportation gas produced from gas wells or from oil wells from any owner or operator shall purchase or take ratably without discrimination in favor of any owner or operator, over any other owner or operator in a pool. The person shall not discriminate in the quantities purchased, the basis of measurement, or the gas transportation facilities afforded for gas of like quantity, quality, and pressure available from such wells. For the purpose of this section and RCW 78.52.345, reasonable differences in quantity taken or facilities afforded do not constitute unreasonable discrimination if the differences bear a fair relationship to differences in quality, quantity, or pressure of the gas available or the acreage attributable to the well, market requirements, or to the relative lengths of time during which the gas will be available to the purchaser. If the purchaser or person taking gas for transportation is likewise an operator or owner, the purchaser or person is prohibited from discriminating in favor of quantities taken or facilities in which he or she may be interested, and his or her own production shall be treated as that of any other operator or owner producing from gas wells in the same pool. [1983 c 253 § 25.]

RCW 78.52.365 Enforcement of RCW 78.52.345 and 78.52.355. The department may administer and enforce RCW 78.52.345 and 78.52.355 in accordance with the procedures in this chapter for its enforcement and with the rules and orders of the department. [1994 sp.s. c 9 § 844; 1983 c 253 § 26.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.450 Participation of public lands in unit plan. The commissioner of public lands, or other officer or board having the control and management of state land, and the proper board or officer of any political, municipal, or other subdivision or agency of the state having control and management of public lands, may, on behalf of the state or of such political, municipal, or other subdivision or agency thereof, with respect to land and oil and gas rights subject to the control and management of such respective body, board or officer, consent to and participate in any unit plan. [1951 c 146 § 48.]

RCW 78.52.460 Unit plan not deemed monopolistic. No plan for the operation of a field or pool of oil or gas as a unit, either whole or in part, created or approved by the department under this chapter may be held to violate any of the statutes of this state prohibiting monopolies or acts, arrangements, agreements, contracts, combinations,

or conspiracies in restraint of trade or commerce. [1994 sp.s. c 9 § 845; 1951 c 146 § 49.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.463 Suspension of operations for violation—Notice—Order—Hearing—Stay of order. (1) Any operation or activity that is in violation of applicable laws, rules, orders, or permit conditions is subject to suspension by order of the department. The order may suspend the operations authorized in the permit in whole or in part. The order may be issued only after the department has first notified the operator or owner of the violations and the operator or owner has failed to comply with the directions contained in the notification within ten days of service of the notice: PROVIDED, That the department may issue the suspension order immediately without notice if the violations are or may cause substantial harm to adjacent property, persons, or public resources, or has or may result in the pollution of waters in violation of any state or federal law or rule. A suspension shall remain in effect until the violations are corrected or other directives are complied with unless declared invalid by the department after hearing or an appeal. The suspension order and notification, where applicable, shall specify the violations and the actions required to be undertaken to be in compliance with such laws, rules, orders, or permit conditions. The order and notification may also require remedial actions to be undertaken to restore, prevent, or correct activities or conditions which have resulted from the violations. The order and notification may be directed to the operator or owner or both.

(2) The suspension order constitutes a final and binding order unless the owner or operator to whom the order is directed requests a hearing before the department within fifteen days after service of the order. Such a request shall not in itself stay or suspend the order and the operator or owner shall comply with the order immediately upon service. The department may stay or suspend in whole or in part the suspension order pending a hearing if so requested. The hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act. [1994 sp.s. c 9 § 846; 1989 c 175 § 167; 1983 c 253 § 29.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 78.52.467 Illegal oil, gas, or product—Sale, purchase, etc., prohibited—Seizure and sale—Deposit of proceeds. (1) The sale, purchase, acquisition, transportation, refining, processing, or handling of illegal oil, gas, or product is prohibited. However, no penalty by way of fine may be imposed upon a person who sells, purchases, acquires, transports, refines, processes, or handles illegal oil, gas, or product unless (a) the person knows, or is put on notice of, facts indicating that illegal oil, illegal gas, or illegal product is involved, or (b) the person fails to obtain a certificate

of clearance with respect to the oil, gas, or product if prescribed by rule or order of the department, or fails to follow any other method prescribed by an order of the department for the identification of the oil, gas, or product.

(2) Illegal oil, illegal gas, and illegal product are declared to be contraband and are subject to seizure and sale as provided in this section. Seizure and sale shall be in addition to all other remedies and penalties provided in this chapter for violations relating to illegal oil, illegal gas, or illegal product. If the department believes that any oil, gas, or product is illegal, the department acting through the attorney general, shall bring a civil action in rem in the superior court of the county in which the 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. A person claiming an interest in oil, gas, or product affected by an action in rem has the right to intervene as an interested party.

(3) Actions for the 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 may be required of the plaintiff. Upon the filing of the petition for seizure and sale, the clerk of the court shall issue a summons, with a copy of the petition attached thereto, directed to the sheriff of the county or to another officer or person whom the court may designate, for service upon all persons having or claiming any interest in the oil, gas, or product described in the petition. The summons shall command these persons to appear and answer within twenty days after the issuance and service of the summons. These persons need not be named or otherwise identified in the summons, and the summons shall be served by posting a copy of the summons, with a copy of the petition attached, on any public bulletin board or at the courthouse of a county where the oil, gas, or product involved is located, and by posting another copy at or near the place where the oil, gas, or product is located. The posting constitutes notice of the action to all persons having or claiming any interest in the oil, gas, or product described in the petition. In addition, if the court, on a properly verified petition, or affidavit or affidavits, or oral testimony, finds that grounds for seizure and for sale exist, the court shall issue an immediate order of seizure, describing the oil, gas, or product to be seized, and directing the sheriff of the county to take the oil, gas, or product into the sheriff's actual or constructive custody and to hold the same subject to further orders of the court. The court, in the order of seizure, may direct the sheriff to deliver the oil, gas, or product seized by him or her under the order to a court-appointed agent. The agent shall give bond in an amount and with such surety as the court may direct, conditioned upon compliance with the orders of the court concerning the custody and disposition of the oil, gas, or product.

(4) Any person having an interest in oil, gas, or product described in order of seizure and contesting the right of the state to seize and sell the oil, gas, or product may obtain its release prior to sale upon furnishing to the sheriff a bond approved by the court. The bond shall be in an amount equal to one hundred fifty percent of the market value of the oil, gas, or product to be released and shall be conditioned upon either redelivery to the sheriff of the released commodity or payment to the sheriff of its market value, if and when

ordered by the court, and upon full compliance with further orders of the court.

(5) If the court, after a hearing upon a petition for the seizure and sale of oil, gas, or product, finds that the oil, gas, or product is contraband, the court shall order its sale 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 sale, title to the oil, gas, or product sold shall vest in the purchaser free of all claims, and it shall be legal oil, legal gas, or legal product in the hands of the purchaser.

(6) All proceeds, less costs of suit and expenses of sale, which are derived from the sale of illegal oil, illegal gas, or illegal product, 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. [1994 sp.s. c 9 § 847; 1983 c 253 § 30.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.470 Objections to order—Hearing required—Modification of order. Any person adversely affected by any order of the department may, within thirty days from the effective date of such order, apply for a hearing with respect to any matter determined therein. No cause for action arising out of any order of the department accrues in any court to any person unless the person makes application for a hearing as provided in this section. Such application shall set forth specifically the ground on which the applicant considers the order to be unlawful or unreasonable. No party shall, in any court, urge or rely upon any ground not set forth in said application. An order made in conformity to a decision resulting from a hearing which abrogates, changes, or modifies the original order shall have the same force and effect as an original. Such hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, and shall be conducted in accordance with its provisions. [1994 sp.s. c 9 § 848; 1989 c 175 § 168; 1983 c 253 § 27; 1951 c 146 § 50.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 78.52.480 Appeal from order or decision—Rights of department. In proceedings for review of an order or decision of the department, the department shall be a party to the proceedings and shall have all rights and privileges granted by this chapter to any other party to such proceedings. [1994 sp.s. c 9 § 849; 1983 c 253 § 28; 1951 c 146 § 51.]

Severability—Headings and captions not law—Effective date—1994
sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.490 Appeal—How taken. Within thirty days after the application for a hearing is denied, or if the application is granted, then within thirty days after the rendition of the decision on the hearing, the applicant may apply to the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of petitioner's residence or place of business, or (c) in any county where the property or property rights owned by the petitioner is located for a review of such rule, regulation, order, or decision. The application for review shall be filed in the office of the clerk of the superior court of Thurston county and shall specifically state the grounds for review upon which the applicant relies and shall designate the rule, regulation, order, or decision sought to be reviewed. The applicant shall immediately serve a certified copy of said application upon the commissioner of public lands who shall immediately notify all parties who appeared in the proceedings before the department that such application for review has been filed. In the event the court determines the review is solely for the purpose of determining the validity of a rule or regulation of general applicability the court shall transfer venue to Thurston county for a review of such rule or regulation in the manner provided for in RCW 34.05.570. [1994 sp.s. c 9 § 850; 1983 c 253 § 32; 1951 c 146 § 52.]

Severability—Headings and captions not law—Effective date—1994
sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.530 Violations—Injunctions. Whenever it shall appear that any person is violating any provisions of this chapter, or any rule, regulation, or order made by the department under this chapter, and if the department cannot, without litigation, effectively prevent further violation, the department may bring suit in the name of the state against such person in the superior court in the county of the residence of the defendant, or in the county of the residence of any defendant if there be more than one defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation. In such suit the department may without bond obtain injunctions prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts may warrant. [1994 sp.s. c 9 § 851; 1951 c 146 § 56.]

Severability—Headings and captions not law—Effective date—1994
sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.540 Violations—Injunctions by private party. If the department fails to bring suit within thirty days to enjoin any apparent violation of this chapter, or of any rule, regulation, or order made by the department under this chapter, then any person or party in interest adversely affected by such violation, who has requested the department in writing to sue, may, to prevent any or further violation, bring suit for that purpose in the superior court of any county where the department could have instituted such suit.

If, in such suit, the court should hold that injunctive relief should be granted, then the state shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the state had at all times been the complainant. [1994 sp.s. c 9 § 852; 1951 c 146 § 57.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

RCW 78.52.550 Violations—Penalty. Every person who shall violate or knowingly aid and abet the violation of this chapter or any valid orders, rules, and regulations issued thereunder, or who fails to perform any act which is herein made his or her duty to perform, shall be guilty of a gross misdemeanor. [2013 c 23 § 253; 1951 c 146 § 58.]

RCW 78.52.560 Hydraulic fracturing—Prohibited for the exploration and production of oil and natural gas. (1) The use of hydraulic fracturing in the exploration for, and production of, oil and natural gas is prohibited. This section does not prohibit the use of hydraulic fracturing for other purposes.

(2) For the purposes of this section, "hydraulic fracturing" means the process of pumping a fluid into or under the surface of the ground in order to create fractures in rock for the purpose of the production or recovery of oil or natural gas. [2019 c 294 § 1.]

RCW 78.52.900 Short title. This chapter shall be known as the "Oil and Gas Conservation Act." [1951 c 146 § 2.]

RCW 78.52.910 Construction—1951 c 146. It is intended that the provisions of this chapter shall be liberally construed to accomplish the purposes authorized and provided for, or intended to be provided for by this chapter. [1951 c 146 § 59.]

RCW 78.52.920 Severability—1951 c 146. If any part or parts of this chapter, or the application thereof to any person or circumstances be held to be unconstitutional, such invalidity shall not affect the validity of the remaining portions of this chapter, or the application thereof to other persons or circumstances. The legislature hereby declares that it would have passed the remaining parts of this chapter if it had known that said invalid part or parts thereof would be declared unconstitutional. [1951 c 146 § 60.]