



1948

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Recommended Citation

Friederich, Ray R. and Garrison, Maurice E. (1948) "Legal History of Conservation of Oil and Gas in North Dakota," *North Dakota Law Review*: Vol. 24 : No. 4 , Article 1.

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LEGAL HISTORY OF CONSERVATION OF OIL AND GAS IN NORTH DAKOTA *

By RAY R. FRIEDERICH AND MAURICE E. GARRISON†

NORTH DAKOTA is among those states who look enviously to the wealth and romance which accompanied the discovery of oil and gas in sister states. The vast deposits of lignite coal in the state, and the "armchair geologist" belief that oil and gas deposits accompany the deposits of coal is probably why, in the absence of a commercially profitable discovery of these two minerals, a keen interest in them has nevertheless prevailed.

Gas was first discovered in North Dakota by accident in July of 1907 while drilling for water on a farm about nine miles south of Westhope, in Bottineau County.¹ The Great Northern Oil, Gas and Pipeline Company was immediately organized to prospect and develop the field and a number of villages in that vicinity were supplied with gas for heating, cooking, and lighting from wells that were sunk. Later, the company was reorganized into the North Dakota Gas Company. The first gas wells were mainly confined to Bottineau County in the north-central part of the state, but gas was also found near Crosby, in Williams County, in the north-western part of the state, and in LaMoure County, in the southeastern part later on.² In recent years those wells have become more or less obscure and the principal gas producing area is now in Bowman County in the extreme southwestern part of the state. (See map on page 178). The Montana-Dakota Utilities Company had 14 wells in Bowman County in 1943, but not all were in production. The latest available figures show that in that year a total of 177,067,000 cubic feet of gas was produced, which was 55,112,000 cubic feet more than was produced in 1942. It is believed that new unitization

* This paper is the product of research done by the authors as senior law students in connection with a symposium on the subject being developed by the American Bar Association.

† Members of the North Dakota Bar.

¹ A. G. Leonard, *Natural Gas in North Dakota*, U. S. Geol. Survey, Bulletin No. 431, pp. 3-6, (1910).

² A. G. Leonard, *Possibilities of Oil and Gas in North Dakota*, N. D. Geol. Survey, Bulletin No. 1, p. 2, (1920).

agreements signed since then, should have increased the amount produced in 1944 and subsequent years.³

It is within the realm of this article to show the extent of "wildcat" drilling for oil within the state prior to 1943.⁴ (See also map on page 178) Although none of these wells have produced oil in commercial quantities, the picture is not as discouraging as it might seem since the Carter N. P. No. 1 well (See map on page 178), just over the Montana-North Dakota border is producing oil in substantial quantities, and there is every reason to believe that the oil bearing strata of that well also extends a few hundred yards farther east and into North Dakota.

In conjunction with the optimism that prevails, the matter of conservation of these minerals has not been overlooked and the state can well be classed as "conservation conscious." This can be seen from the fact that as early as 1911 a statute was enacted by the legislature which provided that any well producing natural gas in the state, in order to prevent gas wasting by escape, be shut and the gas confined until such time as it could be utilized for lights, fuel, or power purposes.⁵ This law, however, was specifically stated not to apply to any well operated for oil.

There is little information available as to what prompted the legislature to pass the second conservation measure in

³ W. M. Laird, *Stratigraphy and Structure of North Dakota*, N. D. Geol Survey, Bulletin No. 18, p. 10, (1944)

⁴ *Op. Cit.* pp. 10-11. (Wildcats Drilled Prior to 1943) (See map on page 178)

- (1) Des Lacs Western Oil Company No. 1, Ward County, completed 1923.
- (2) Davis Well, Adams County, completed April 27, 1923.
- (3) Glenfield Oil Company Well, Foster County, completed 1928.
- (4) Prairie Oil and Gas Company's No. 1 Armstrong, Kidder County, completed January 15, 1930.
- (5) A. R. Jones Oil Operating Company's No. 1 Gehringer, Renville County, completed 1934.
- (6) D. J. Carter and Company No. 1 Well, Logan County, completed 1934.
- (7) A. C. Townley Interests No. 1 Robinson Patented Land, Kidder County, completed 1934.
- (8) Big Viking Oil Company No. 1 Well, Williams County, completed 1935.
- (9) California Company No. 1 Kamp, Williams County, completed October 1940.
- (10) Carter Oil Company (test), Morton County, completed October 1940.
- (11) Carter Oil Company's No. 1 Emma L. Semling, Oliver County, completed August 26, 1942.

Well Drilled in 1943

- (12) Northern Ordnance Inc. No. 1 Franklin Investment Co., Emmons County, completed July 22, 1943.

Well Drilled in Montana

- (13) Carter N. P. No. 1.

⁵ Chapter 195 Session Laws 1911.

1929.⁶ From the act itself it is apparent that strong influence was present. It provided for licensing of any person or corporation who desires to drill either a test hole or an oil or gas well, and required that a permit be obtained from the state geologist, and a detailed log of the drilling operations furnished to him. The principle feature of the law, however, and the one which caused the greatest reaction, was the provision making the drilling log available for examination as a public record to anyone having an interest in land within a radius of 6 miles of the drilling operations, and giving the state geologist the right to examine the drilling operations for purposes of testing and examining the well. Large gas and oil interests in the state objected violently to this measure because of the provisions which stated:

“...the log of drilling operations shall be a public record, and available to all stockholders, bondholders, or lessees of land lying within a radius of six miles of any drilling operations.”

Obviously, a prospecting corporation which has invested thousands of dollars in search of a new field would be reluctant to disclose its entire record which had been obtained at great expense. It is doubtful whether the motive for this enactment was for the actual conservation of minerals, but in an entirely rural state the aim of the legislature was probably to protect the farmers and landowners. There had been a number of wildcat operations in the state which were based in promotional schemes, or on wishful thinking, rather than on a sound technical basis. A promotional scheme of that nature was the A. C. Townley well in Kidder County. The narratives related in connection with the sale of stock in that well and the stories about its promoter, although not reliable enough to state here, have all the elements of a western movie. There was no manifest public reaction to this bill nor was there any reaction to it by the petroleum associations or the federal government. Essentially all the older wildcats were financed by stock sold within the state. This law did curb some fraudulent exploitation, but it also very nearly eliminated prospecting by the larger legitimate companies. The 1929 law did not repeal the 1911 law, and during the period from 1929 until 1937 both statutes were on the books.

⁶ Chapter 184 Session Laws 1929.

The influence of the larger gas and oil interests upon the State Geologist, and the apparent detrimental effect which the 1929 law had upon prospecting, caused the legislature to repeal that law in 1937. It enacted another law at the same time which provided that the state geologist shall prescribe and enforce rules and regulations governing the drilling, casing and abandonment of oil and gas wells and the prevention of waste therefrom.⁷ Like the 1929 law, this act provided that all persons and corporations drilling and operating oil wells in North Dakota shall file with the State Geologist a log of all wells within six months after the completion or abandonment of such well. The provision relating to making such logs available to the public was purposely omitted. It was apparent that the old law was not conducive to exploration by the larger legitimate companies, and this law was designed to, and did, encourage scientific exploration in the state. None of the rules and regulations which the statute stated were to be prescribed by the State Geologist can be found either in the office of the State Geologist or the geological department, and it can reasonably be assumed that none were ever written.

Unquestionably the biggest step made in the direction of adequate gas and oil conservation is found in the present law.⁸ Following the repeal of the 1929 law the larger corporations again started to show interest in the possibilities of gas and oil in North Dakota. It was the foresight of Dr. Frank Foley, the State Geologist at that time, and following him Dr. Wilson M. Laird, the present State Geologist, to whom credit is due for this law. Possibilities that gas or oil might be discovered in commercial quantities in the state were more encouraging than ever at this time, and it was obvious to the state geologists, from the experience of other oil producing states, that if adequate conservation measures were not on the books prior to the discovery of gas or oil, it would be extremely difficult to enact such legislation after discovery, because of the influence which oil interests in the state would exert upon the legislators. It was felt that even the 1937 law was woefully inadequate to meet any large scale drilling operations. The drafting of a suitable conservation law was already under way by Dr. Foley in the fall of 1940 when Dr. Laird assumed

⁷ Chapter 135, Session Laws 1937.

⁸ Chapter 170, Session Laws 1941. (N. D. Rev. Code, Chapter 38-08).

the duties of State Geologist. The first proposed conservation measure drafted by Dr. Laird was later found unsuitable and discarded. A model statute compiled by the Interstate Oil Compact Commission was then adopted by the state geologist as the proposed enactment, and Dr. Laird appeared personally before the Affairs Committee of the state legislature on behalf of this bill. This was the only hearing on the bill and no opposition was voiced against it. The bill was introduced and passed unanimously without discussion on the floor of the 1941 legislature.⁹ The bill was under close observation by certain coal interests in the state, but since it did not infringe upon the coal or coal mining business in any manner, these interests made no objection to it.

The law in North Dakota as it stands today on this subject is surprisingly complete, as it might be expected from adoption of a set of laws in which is incorporated the statutes of the oil producing states which have been found most suitable over an extended period of time. The control of the conservation of crude petroleum and natural gas is vested in the State Industrial Commission. The Commission is given control over all persons and property necessary to enforce the provisions of the law. The statute itself does not provide for very extensive conservation measures, but it gives the Industrial Commission the power to pass such rules and regulations for the conservation of crude petroleum and natural gas as the Commission may deem necessary. The Commission adopted a complete set of general rules and regulations for the conservation of crude oil and natural gas on December 19, 1941.¹⁰ These rules also were the product of the Interstate Oil Compact Commission. The functioning and composition of the Industrial Commission will be discussed in detail later.

It should be noted here that the first law passed in 1911 was never repealed and although it was not a part of the 1941 law, it was included among the statutes of the 1941 law by the statute revisors in 1943, and now comprises N. D. Rev. Code (1943) sec. 38-0810, remaining in substantially its original form except that it is now made applicable to both gas and oil and not gas alone as it was originally enacted.

From an examination of the various enactments of the

⁹ Chapter 170, Session Laws 1941. (N. D. Rev. Code, Chapter 38-08).

¹⁰ General rules and Regulations for the Conservation of Crude Oil and Natural Gas.

state and the circumstances surrounding these statutes, it is indicated that the theory of conservation of the natural resources of the state has grown rather slowly throughout the years. The impelled motive in the passing of the 1911 law¹¹ was that of the protection of the adjacent landowners as is indicated in the reports of the State Geologist, A. G. Leonard, writing in 1910.¹² There he records that the gas from the well was escaping in such quantities that a loud roar could be heard in a town four miles distant. Considering the unsettled condition of much of the state at that time, it is apparent that capping the wells as required by the statute was aimed at the curbing of escaping gases on the land, and incidentally the conservation of a natural resource. As an incidental result, there was some conservation effected. As has already been stated, it is very doubtful whether the 1929 law¹³ was directed in the interests of conservation. From the incomplete data available, it seems that the impelling motive was the curbing of fraud upon the innocent farmers and landowners in a primarily agricultural state. The law did achieve its purpose somewhat though there is no indication there was a sudden stoppage of the limited wildcat operations in view of the necessity for a public document being kept of all the activities. What actually happened in those instances where a well was drilled is that the companies simply disregarded the law and the State Geologist did not enforce its provisions. There was, however, in general a detrimental effect on any large scale operations, and this overbalanced the incidental benefits of conservation. But by 1937,¹⁴ the legislature saw fit to retain those few provisions for conservation and eliminate the objectionable features of the public documentation of all the logs of activities. From this slow development, the 1941 law¹⁵ stands out as a model of sound planning for the future interests of the state in the protection and conservation of its natural resources. These statutes provide either by express provision, delegation to the rule making agency, or impliedly, all the powers necessary to assure the full and complete conservation of oil and gas.

¹¹ Chapter 195, Session Laws 1911.

¹² A. G. Leonard, *Natural Gas in North Dakota*, U. S. Geol. Survey, Bulletin No. 431, pp. 3-6, (1910)

¹³ Chapter 184, Session Laws 1929.

¹⁴ Chapter 135, Session Laws 1937.

¹⁵ Chapter 170, Session Laws 1941. (N. D. Rev. Code, Chapter 38-08).

There is first of all a specific definition of the meaning of waste in all its forms.

“Waste, in addition to its ordinary meaning, shall include physical waste as that term is generally understood in the oil and gas industry and shall include:

a. Underground waste and the inefficient, excessive, or improper use or dissipation of reservoir energy, including gas energy and water drive, of any pool; and the locating, spacing, drilling, equipping, operating or producing of any oil well or gas well in a manner which results or tends to result in reducing the quantity of oil or gas ultimately recoverable from any pool; and

b. Surface waste and the inefficient storing of oil and the locating, spacing, drilling, equipping, operating or producing of oil wells or gas wells in a manner causing or tending to cause unnecessary or extensive surface loss or destruction of oil or gas.”

This definition is followed by a direct prohibition of waste of gas and oil.¹⁶

“Waste of Oil and Gas Prohibited. The production or handling of crude petroleum oil or natural gas in such a manner or under such conditions as to constitute waste is prohibited. If gas production is developed in the course of drilling for gas or oil, the owner within ten days after production commences shall determine whether the well shall be used for the production of gas or drilled further for the purpose of producing oil. If the well is not to be drilled further for oil, the producer shall prevent the waste of gas by shutting and confining the same in the well until such time as the gas shall be utilized for lighting, fuel, or power purposes. The production of water, however, insofar as such gas comes from a water bearing formation, shall not constitute waste under the provisions of this chapter if the discharge of gas does not exceed an average of five thousand cubic feet each twenty-four hour period.”

Following this express enactment as to waste are specific directions to the rule making agency to promulgate such rules, regulations or orders as may be necessary from time to time in the proper administration and enforcement of the provisions of the chapter. These rules, regulations or orders shall include:¹⁷

1. Require the drilling, casing, and plugging of wells to be done in such a manner as to prevent:

¹⁶ N. D. Rev. Code (1943) Sec. 38-0810

¹⁷ N. D. Rev. Code (1943) Sec. 38-0804

- a. The escape of oil or gas from one stratum to another;
 - b. The intrusion of water into oil or gas strata; and
 - c. The pollution of fresh water supplies by oil, gas or salt water;
2. Require a reasonable bond conditioned for the performance of the duty to plug each dry or abandoned well;
 3. Require the person desiring. . .to drill any well for gas or oil, before commencing such drilling, to notify the state geologist. . .and to pay to the Commission a fee of twenty-five dollars. The form prescribed by the state geologist shall require:
 - a. The exact location of the well;
 - b. The name and address of the owner, operator. . .
 - c. The elevation of the well above sea level; and
 - d. Such other relevant information as may be necessary to effectuate the purposes of this chapter.
 4. Compel the filing of logs, . . .drilling records, and typical drill cuttings or cores if cores are taken, in the office of the state geologist within six months after the date of the completion of the well;
 5. Prohibit wells from being drilled, operated, or produced in such a manner as to cause injury to neighboring leases or property;
 6. Prohibit the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities;
 7. Prohibit the premature and irregular encroachment of water which reduces or tends to reduce the total ultimate recovery of oil or gas from any pool;
 8. Require the operations of wells with efficient gas-oil ratios, and fix such ratios;
 9. Prohibit 'blow-outs', caving, and seepage as conditions indicated by such terms are generally understood in the oil and gas business;
 10. Require appropriate precautions for the prevention of fires;
 11. Require the identification of the ownership of all oil and gas wells, producing leases, refineries. . . ;
 12. Regulate the shooting and chemical treatment of wells;
 13. Regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations;
 14. Regulate the spacing of wells;
 15. Require the filing currently of information as to the volume of oil and gas, or either of them, produced and saved from each and every property;

16. Require the filing with the state geologist of a notice of intention to drill a stratigraphic well, which notice shall specify the location of the drilling; and
17. Require the plugging report to be filed with the state geologist within sixty days after the completion of a stratigraphic well.

Finally it is provided that the Commission shall have supervision and control over the crude petroleum and natural gas resources of the state.¹⁸ This gives to the Commission all the implied powers necessary to adequately carry out the legislative intent of this enactment.

Until the present enactment, the supervisory functions of a state agency were in name only. A state geologist was first appointed in 1895 when it was provided by legislation that the professor of geology at the state university was also the State Geologist. From the reports available in the office of the state geologist, it is apparent that the primary function of this office was the compilation of drilling reports and the granting of permits to drill. Other than certain periodical reports, there is nothing to indicate that this office performed any of the functions commonly concerned with conservation. It is interesting to note that although the 1937 statute¹⁹ specifically provided that the State Geologist was to promulgate rules and regulations governing the conservation of gas and oil, such rules were never put into operation. By way of summary, it can be said that until the enactment of the present laws and the subsequent issuance of complete rules and regulations under the supervision of the present geologist, Dr. Wilson M. Laird, there were no adequate measures taken to effect the conservation of gas and oil in this state.

The present agency functioning and in control of the conservation program for North Dakota is the Industrial Commission. The functions of gas and oil conservation were given to the Industrial Commission at the instance of the Governor of the state at the time of the passage of the present law. As this law is based on a model statute proposed and recommended by the Interstate Oil Compact Commission, there was a provision that the functions of this enactment were to be under a separate administrative agency known as the Petroleum Board. Since there was little or no activity in this

¹⁸ N. D. Rev. Code (1943) Sec. 38-0802

¹⁹ Chapter 135, Session Laws 1937.

state in oil and gas it was felt by the Governor that the addition of another administrative agency was a needless duplication of effort; so in the conferences preceding the passage of the present law, it was decided to include all duties as to gas and oil under those of the Industrial Commission.

At the same session of the legislature, there was enacted a Uniform Administrative Practices Act²⁰ which was designed to completely govern proceedings of all administrative agencies operating on a state wide basis. This in terms included the Industrial Commission sitting in its usual capacity and provided a complete set of rules for such activity. Another complete set of rules is provided by the Gas and Oil Statutes covering the procedure of the Commission in administering their provisions. That it was the actual intention of the legislature that the Industrial Commission should be governed by one of procedural rules when acting in its capacity to conserve gas and oil and another set of rules when acting in its more common capacity seems highly improbable. Since, however, a completely independent system is provided by the chapter on conservation of gas and oil, it seems doubtful that the Administration Practices Act would be held to repeal the procedural sections of the chapter on gas and oil. The following discussion, therefore, assumes that the provisions of that chapter on procedural matters will prevail.

The Industrial Commission of the State of North Dakota performs a number of duties within the state in connection with the conduct and management of certain utilities, industries, enterprises, and business projects, the best known of which is the state-owned flour mill. The Commission consists of three members, the Governor of the state acting as chairman, the Attorney-General and the Commissioner of Agriculture and Labor. These members obtain their offices by virtue of election to the respective state offices and maintain their position on the Industrial Commission as long as they hold their elective office. No additional compensation is given for serving as a member of the Commission. Department heads are appointed by the Commission and these department heads in turn hire the necessary employees for their respective departments. Whenever the Industrial Commission deems it necessary, it may employ technical personnel such as geolo-

²⁰ N. D. Rev. Code (1943) Chapter 28-32

gists, engineers, attorneys and the like. The State Geologist under the present law is an assistant to the Industrial Commission with respect to the conservation of oil and natural gases and is required to assist the Commission in every manner possible. The compensation of the various employees and appointees is governed by the appropriations and earnings provided for this purpose by the legislature. It is within the discretion of the Industrial Commission to discharge any of its personnel whenever such discharge is deemed to promote the efficiency of public service.

The Commission passes such rules and regulations as it deems necessary at any of its current meetings. At these meetings, the Attorney-General is the counsel for the Commission and the procedure is generally informal.²¹ In the absence of an emergency, no rule, regulation, or order may be made by the Commission unless a public hearing has been held after 10 days notice was given. This notice may be given in such manner and form as the Commission prescribes.²² This hearing may be held before the Commission, any member thereof, or before the State Geologist at such time and place as may be necessary.²³ But in case of emergency, the Commission may enforce a rule or regulation without first having a hearing as provided above, however, these emergency rules or regulations cannot remain effective more than 15 days and expire in any event when a rule or regulation made after due notice and hearing, becomes effective.²⁴ Any interested party making a request to the Commission in writing may have the Commission call a hearing for the purpose of taking action in respect to any matter within its jurisdiction. At any of the above hearings, the procedure is generally informal; up to the present time no set of rules or regulations governing the appearance of interested parties have been adopted nor have any particular rules of evidence been followed. To date, it is simply provided that any person having business with the Commission may be represented, may file briefs, may cross-examine and present testimony if he so desires.

Upon passage of any rule or regulation made by the Commission, it is entered in full by the State Geologist in a book

²¹ N. D. Rev. Code (1943) Sec. 54-1703

²² N. D. Rev. Code (1943) Sec. 38-0806

²³ N. D. Rev. Code (1943) Sec. 38-0806

²⁴ N. D. Rev. Code (1943) Sec. 38-0807

kept by the Commission for such purpose, which is a public record and is available for public inspection.²⁵ Only the "General Rules and Regulations for the Conservation of Crude Oil and Natural Gas" mentioned before have thus far been adopted and published by the Commission. These are available at the office of the State Geologist at the University of North Dakota, Grand Forks, North Dakota.

The Commission is given power along with the State Geologist to require witnesses to attend, give testimony, and to require the production of books, papers, and records which are material to the issue before the Commission at a hearing.²⁶ If such witnesses fail or refuse to comply with the subpoena so issued, the District Court of any Judicial District of the state on application of the Commission, its members, or the State Geologist shall issue a subpoena.²⁷ Failure to comply with this order will subject the party to contempt proceedings.²⁸ As previously mentioned, the only publication of the Industrial Commission relative to conservation of gas and oil is the "General Rules and Regulations for the Conservation of Crude Oil and Natural Resources." An examination of this publication indicates that the Commission has promulgated adequate rules of conservation. A slightly different definition of waste is given here from that of the code definition. In this publication waste

"in addition to its ordinary meaning, shall mean waste as that term is ordinarily used in the oil and gas industry. The meaning of waste shall include, (1) the inefficient, excessive, or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which results, or tends to result in reducing the quantity of oil or gas ultimately recovered from any pool in this state under production operations, and (2) the inefficient storing of oil; the producing of oil or gas in excess of transportation or marketing facilities or of reasonable market demand; the locating, spacing, drilling, equipping, operating, or producing of a well or wells in a manner causing or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas, and the use of gas from a well producing gas only for the manufacture of carbon black or chemicals, unless otherwise authorized by the Commission."

²⁵ N. D. Rev. Code (1943) Sec. 38-0808

²⁶ N. D. Rev. Code (1943) Sec. 38-0812

²⁷ N. D. Rev. Code (1943) Sec. 38-0813

²⁸ N. D. Rev. Code (1943) Sec. 38-0813

It does not seem necessary to discuss in detail every rule and regulation which is compiled in the "General Rules and Regulations for the Conservation of Crude Oil and Natural Gas" adopted by the Industrial Commission. Only the more pertinent ones will be considered and are as follows:

1. **SPACING**—Unless a different well-spacing plan is adopted the State Geologist will, simultaneous with the establishment of proration units for each pool, prescribe well-spacing plans therefor, the boundaries of which shall coincide, if possible, with the boundaries of such proration units, which plan shall require a minimum of ten (10) acre spacing.
2. **PRESSURE MAINTENANCE**—shall mean (1) the reintroduction (in the early stages of field development) of gas or fluid produced from an oil or gas well to maintain the pressure of the reservoir; (2) the introduction of gas or fluid for the same purpose but obtained from an outside source.
3. **PRESSURE MAINTENANCE OR REPRESSURE WITH GAS OR OIL AND GAS PROPERTIES**—The owner or operator of any well may inject gas under pressure into the formation containing oil or gas from the reservoir, upon application to and approval by the State Geologist. No gas shall be injected into a well for pressure maintenance or repressuring purposes until so ordered by the State Geologist pursuant to application, and notice as herein required.

The application shall be verified and filed with the State Geologist showing; (for example)

- (a) the location of the intake well
 - (b) the formations from which wells are producing or have produced.
 - (c) the log of the intake well or such information as is available.
4. **GAS-OIL RATIO**—shall mean the relation of the gas in cubic feet to the production of oil in barrels as accepted by pipe lines.

By special order the State Geologist will authorize periodic gas-oil surveys and reports to be filed on forms furnished by the Commission and including thereon for each well: Pool, reservoir and county in which the well is located; lease name and well number; elevation; producing formation; size and length of tubing; size and length of casing (oil string); size choke (if pumping well so designate); tubing pressure, casing pressure and trap pressure; production of water; oil and gas (in thousands of cubic feet) during the test; gas-oil ratio; and the A.P.I. gravity of the oil; duration of the test. The data shall be

furnished for each well separately and the gas-oil ratio shall be determined according to the following procedure.

5. **PRORATION UNITS**—Immediately upon the discovery of any pool or after the effective date hereof, the Commission may prescribe proration units for each pool which shall include shape, size and location thereof.

6. **EQUITABLE DISTRIBUTION OF PRODUCTION—PURPOSE OF ACT**

A. Whenever the total amount of oil which all the producers in the state can produce exceeds the amount reasonably required to meet the reasonable market demand for oil produced in the state, then the Commission in order to prevent waste may limit the total amount of oil which may be produced by fixing a state allowable. The Commission may then allocate or distribute the allowable production among the pools in an equitable, reasonable and nondiscriminatory manner.

B. In prorating the production allowed to each pool among the proration or drilling units therein, the Commission shall first deduct from the total pool allowable the quantity of oil which will be produced by the minimum or unprorated wells in such pool during such proration period and the balance shall be distributed pro rata among the remaining proration or drilling units in an equitable and reasonable manner, insofar as the same can be practically done.

7. **DISPOSAL OF BRINE OR SALT WATER—**

A. Brine or salt water produced in the drilling for or the production of oil or gas shall not be run to earthen reservoirs or ponds, except for such reasonable time and under such conditions as may be approved by the State Geologist after which it must be returned to some underground formation or otherwise disposed of as approved by the State Geologist where it cannot do damage to any fresh water, oil, gas or other minerals.

B. Application approval and place of disposal. Salt water or other water containing minerals in such amount as to be unfit for domestic, stock, irrigation, or other general uses, upon application to, and approval by the State Geologist may be disposed of by injection into the following formations:

1. Non producing zones of oil or gas-bearing formations that contain water mineralized by processes of nature to such a degree that the water is unfit for domestic stock, irrigation, or other general uses.

2. All non producing formations containing water mineralized by processes of nature to such a degree that the water is unfit for domestic, stock, irrigation, or other general uses; provided, that before any such formations are

approved for disposal use, it shall be ascertained that they are separated from fresh water formations by impervious beds which will give adequate protection to such fresh-water formations, and that fresh-water supplies contained by the proposed disposal formation near its outcrop shall be at such a remote distance as not to be endangered by addition of mineralized water in the proposed disposal wells.

8. FLOWING WELLS CONTINUOUSLY PRODUCED—The oil flow shall be stabilized during the 24 hour period immediately preceding the test at a rate fixed as nearly as possible to its allowable as shown on the Commission's current oil proration schedule. Major adjustments in the rate of flow shall be made during the first 12 hours of the stabilization period and only minor adjustments made during the last 12 hours. No adjustments shall be made during the time in which the well is being tested and the rate of production during the test shall not be less than the well's daily allowable. Should gas be withdrawn from the casing in an attempt to maintain a fluid seal or for any other reason, this volume of gas must be added to gas produced through tubing in computing the gas-oil ratio.

If it appears that the Commission is unable to prevent a violation, or threatened violation of any rule, regulation, or order, it may through the Attorney-General bring a suit in the name of the State to restrain such violation or threatened violation in the District Court where the defendant is a resident or in the county where the violation occurred, or in any event in Burleigh County.²⁹ An appeal by either party to the Supreme Court of the state may be taken from such restraining order.³⁰ An appeal may also be taken by an interested party who seeks to test the validity or to enjoin the enforcement of any provisions of the latter chapter or of any rules, regulations, or orders issued by the Commission.³¹ The manner of presenting such an appeal is governed by the regular proceedings in injunction appeals.

North Dakota in the past adopted a very restrictive view as to the weight to be given to administrative findings, giving a trial de novo on appeal from administrative orders.³² This

²⁹ N. D. Rev. Code (1943) Sec. 38-0819

³⁰ N. D. Rev. Code (1943) Sec. 38-0820 (1)

³¹ N. D. Rev. Code (1943) Sec. 38-0820 (2)

³² Gotchy v. N. D. Workmen's Compensation Bureau, 49 N. D. 915, 194 N. W. 663 (1923); Weisgerber v. N. D. Workmen's Compensation Bureau, 70 N. D. 165, 292 N. W. 627, 128 A. L. R. 1482 (1940); Starkenberg v. N. D. Workmen's Compensation Bureau, 73 N. D. 234, 13 N. W. 2d 395 (1944); In Re Minneapolis, St. P. & S. Ste. M. R. Co., 30 N. D. 221, 152 N. W. 513 (1915); In Re Tri State Motor Transp. Co., 67 N. D. 119, 270 N. W. 100 (1936).

policy has continued under the Administrative Practices Act ³³ and it must be assumed would greatly influence the court in the scope of review given to findings of the Industrial Commission in its capacity of control of gas and oil.

In spite of the interest in conservation in this state, from 1911 until the present, there has been no challenging of the validity of any of the enactments nor has there been any litigation whatsoever involving gas and oil conservation. Not one case can be found in which the courts have considered any of the provisions which have been previously discussed in this paper.

Through this entire discussion, the present law of conservation has been commended and in a critical appraisal of the legislative, administrative and judicial phases of conservation, this commendation appears justified. It has been pointed out that either through an oversight or insufficient planning on the part of the framers of the present law, the administrative functions of the Industrial Commission are duplicated in different chapters of the code. This causes added confusion when a conscientious effort is made to determine the exact scope of the Industrial Commission in the matter of conservation of gas and oil. But overbalancing this technical administrative difficulty is the fact that although North Dakota ranks among the lowest in the production of oil and gas in commercial quantities, there is a thorough, comprehensive conservation statute. Generally speaking, the legislation is adequate, but the present personnel are only a skeleton of the force necessary to administer the present rules and regulations if drilling operations should suddenly develop into a large scale. This state can well be proud of the foresight of those individuals who have contributed in the compiling of the present enactment.

³³ In Re Northern Pacific Railroad Co., 74 N. D. 416, 23 N. W. 2d 49 (1946)