

## Chapter 6

### Board and Division of Oil, Gas, and Mining

#### 40-6-1 Declaration of public interest.

It is declared to be in the public interest to foster, encourage, and promote the development, production, and utilization of natural resources of oil and gas in the state of Utah in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained and that the correlative rights of all owners may be fully protected; to provide exclusive state authority over oil and gas exploration and development as regulated under the provisions of this chapter; to encourage, authorize, and provide for voluntary agreements for cycling, recycling, pressure maintenance, and secondary recovery operations in order that the greatest possible economic recovery of oil and gas may be obtained within the state to the end that the land owners, the royalty owners, the producers, and the general public may realize and enjoy the greatest possible good from these vital natural resources.

Enacted by Chapter 205, 1983 General Session

#### 40-6-2 Definitions.

For the purpose of this chapter:

- (1) "Board" means the Board of Oil, Gas, and Mining.
- (2) "Correlative rights" means the opportunity of each owner in a pool to produce the owner's just and equitable share of the oil and gas in the pool without waste.
- (3) "Condensate" means hydrocarbons, regardless of gravity, that:
  - (a) occur naturally in the gaseous phase in the reservoir; and
  - (b) are separated from the natural gas as liquids through the process of condensation either in the reservoir, in the wellbore, or at the surface in field separators.
- (4) "Consenting owner" means an owner who, in the manner and within the time frame established by the board in rule, consents to the drilling and operation of a well and agrees to bear the owner's proportionate share of the costs of the drilling and operation of the well.
- (5) "Crude oil" means hydrocarbons, regardless of gravity, that:
  - (a) are produced at the wellhead in liquid form; and
  - (b)
    - (i) occur naturally in the liquid phase in the reservoir; or
    - (ii) are produced through enhanced recovery operations authorized by the board in accordance with Subsection 40-6-5(3)(c).
- (6) "Division" means the Division of Oil, Gas, and Mining.
- (7)
  - (a) "Gas" means natural gas, as defined in Subsection (10), natural gas liquids, as defined in Subsection (11), other gas, as defined in Subsection (17), or any mixture of them.
  - (b) "Gas" does not include any gaseous or liquid substance processed from coal, oil shale, or tar sands.
- (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 board.
- (9) "Illegal product" means any product derived in whole or in part from illegal oil or illegal gas.
- (10)

- (a) "Natural gas" means hydrocarbons that occur naturally in the gaseous phase in the reservoir and are produced and recovered at the wellhead in gaseous form, except natural gas liquids as defined in Subsection (11) and condensate as defined in Subsection (3).
- (b) "Natural gas" includes coalbed methane gas.
- (11) "Natural gas liquids" means hydrocarbons, regardless of gravity, that are separated from natural gas as liquids in gas processing plants through the process of condensation, absorption, adsorption, or other methods.
- (12) "Nonconsenting owner" means an owner who does not, after written notice and in the manner and within the time frame established by the board in rule, consent to the drilling and operation of a well or agree to bear the owner's proportionate share of the costs.
- (13)
  - (a) "Oil" means crude oil, as defined in Subsection (5), condensate, as defined in Subsection (3), or any mixture of them.
  - (b) "Oil" does not include, except as provided in Subsection (13)(c), any gaseous or liquid substance processed from coal, oil shale, or tar sands.
  - (c) "Oil" includes tar sands produced at the wellhead in liquid form through enhanced recovery operations authorized by the board in accordance with Subsection 40-6-5(3)(c).
- (14) "Oil and gas operations" means to explore for, develop, or produce oil and gas.
- (15)
  - (a) "Oil and gas proceeds" means any payment that:
    - (i) derives from oil and gas production from any well located in the state;
    - (ii) is expressed as a right to a specified interest in the:
      - (A) cash proceeds received from the sale of the oil and gas; or
      - (B) the cash value of the oil and gas; and
    - (iii) is subject to any tax withheld from the payment pursuant to law.
  - (b) "Oil and gas proceeds" includes a royalty interest, overriding royalty interest, production payment interest, or working interest.
  - (c) "Oil and gas proceeds" does not include a net profits interest or other interest the extent of which cannot be determined with reference to a specified share of:
    - (i) the cash proceeds received from the sale of the oil and gas; or
    - (ii) the cash value of the oil and gas.
- (16) "Operator" means a person who has been designated by the owners or the board to operate a well or unit.
- (17)
  - (a) "Other gas" means nonhydrocarbon gases that:
    - (i) occur naturally in the gaseous phase in the reservoir; or
    - (ii) are injected into the reservoir in connection with pressure maintenance, gas cycling, or other secondary or enhanced recovery projects.
  - (b) "Other gas" includes hydrogen sulfide, carbon dioxide, helium, and nitrogen.
- (18) "Owner" means a person who has the right:
  - (a) to drill into and produce from a reservoir; and
  - (b) to appropriate the oil and gas produced for that person or for that person and others.
- (19) "Payor" means the person who undertakes to distribute oil and gas proceeds to the persons entitled to them, whether as the first purchaser of that production, as operator of the well from which the production was obtained, or as lessee under the lease on which royalty is due.
- (20) "Person" means the same as that term is defined in Section 68-3-12.5 and includes an operator or owner as used in this chapter.

- (21) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each zone of a general structure that is completely separated from any other zone in the structure is a separate pool. "Common source of supply" and "reservoir" are synonymous with "pool."
- (22) "Pooling" means the bringing together of separately owned interests for the common development and operation of a drilling unit.
- (23)
- (a) "Pore space" means subsurface porous material possessing free space, naturally or artificially created, between the mineral grains.
  - (b) "Pore space":
    - (i) is expressed as a percentage; and
    - (ii) depends on the size and sorting of the subsurface material's particles as a cubic or hexagonal package.
  - (c) "Pore space" does not include void or cavern space created by the removal of minerals in the course of solution mining or other mining operations.
- (24) "Producer" means the owner or operator of a well capable of producing oil and gas.
- (25) "Product" means any commodity made from oil and gas.
- (26) "Surface land" means privately owned land:
- (a) overlying privately owned oil and gas resources;
  - (b) upon which oil and gas operations are conducted; and
  - (c) owned by a surface land owner.
- (27)
- (a) "Surface land owner" means a person who owns, in fee simple absolute, all or part of the surface land as shown by the records of the county where the surface land is located.
  - (b) "Surface land owner" does not include the surface land owner's lessee, renter, tenant, or other contractually related person.
- (28) "Surface land owner's property" means a surface land owner's:
- (a) surface land;
  - (b) crops on the surface land; and
  - (c) existing improvements on the surface land.
- (29) "Surface use agreement" means an agreement between an owner or operator and a surface land owner addressing:
- (a) the use and reclamation of surface land owned by the surface land owner; and
  - (b) compensation for damage to the surface land caused by oil and gas operations that result in:
    - (i) loss of the surface land owner's crops on the surface land;
    - (ii) loss of value of existing improvements owned by the surface land owner on the surface land; and
    - (iii) permanent damage to the surface land.
- (30) "Waste" means:
- (a) the inefficient, excessive, or improper use or the unnecessary dissipation of oil or gas or reservoir energy;
  - (b) the inefficient storing of oil or gas;
  - (c) the locating, drilling, equipping, operating, or producing of any oil or gas well in a manner that causes:
    - (i) a reduction in the quantity of oil or gas ultimately recoverable from a reservoir under prudent and economical operations;
    - (ii) unnecessary wells to be drilled; or
    - (iii) the loss or destruction of oil or gas either at the surface or subsurface; or

- (d) the production of oil or gas in excess of:
  - (i) transportation or storage facilities; or
  - (ii) the amount reasonably required to be produced as a result of the proper drilling, completing, testing, or operating of a well or otherwise utilized on the lease from which it is produced.

Amended by Chapter 62, 2022 General Session

Amended by Chapter 96, 2022 General Session

#### **40-6-2.5 Preemption.**

- (1)
  - (a) As used in this section, "oil and gas activity" means activity associated with the exploration, development, production, processing, and transportation of oil and gas as set forth in Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining, including:
    - (i) drilling;
    - (ii) hydraulic fracture stimulation;
    - (iii) completion, maintenance, reworking, recompletion, disposal, plugging, and abandonment of wells;
    - (iv) construction activities;
    - (v) secondary and tertiary recovery techniques;
    - (vi) remediation activities; and
    - (vii) any other activity identified by the Board of Oil, Gas, and Mining.
  - (b) Oil and gas activity does not include any activity or authority directly authorized or granted to a political subdivision by the state.
- (2) Subject to relevant federal law, regulation of oil and gas activity is of statewide concern and the state regulation of oil and gas activity occupies the whole field of potential regulation.
- (3) The legislative body of a political subdivision may enact, amend, or enforce a local ordinance, resolution, or rule consistent with its general land use authority that:
  - (a) regulates only surface activity that is incident to an oil and gas activity;
  - (b) does not effectively or unduly limit, ban, or prohibit an oil and gas activity; and
  - (c) is not otherwise preempted by state or federal law.

Enacted by Chapter 460, 2018 General Session

#### **40-6-3 Waste prohibited.**

The waste of oil or gas is prohibited.

Enacted by Chapter 205, 1985 General Session

#### **40-6-4 Board of Oil, Gas, and Mining created -- Functions -- Appointment of members -- Terms -- Chair -- Quorum -- Expenses.**

- (1)
  - (a) There is created within the Department of Natural Resources the Board of Oil, Gas, and Mining.
  - (b) The board shall be the policy making body for the Division of Oil, Gas, and Mining.
- (2)
  - (a) The board shall consist of seven members appointed by the governor with the advice and consent of the Senate in accordance with Title 63G, Chapter 24, Part 2, Vacancies.

- (b) In accordance with the requirements of Section 79-2-203, the members appointed under Subsection (2)(a) shall include the following:
  - (i) two members who are knowledgeable in mining matters;
  - (ii) two members who are knowledgeable in oil and gas matters;
  - (iii) one member who is knowledgeable in ecological and environmental matters;
  - (iv) one member who:
    - (A) is a private land owner;
    - (B) owns a mineral or royalty interest; and
    - (C) is knowledgeable in mineral or royalty interests; and
  - (v) one member who is knowledgeable in geological matters.
- (3)
  - (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.
  - (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
  - (c) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, but not more than 90 days after the expiration of the member's term.
- (4)
  - (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor with the advice and consent of the Senate.
  - (b) The person appointed shall have the same qualifications as the person's predecessor.
- (5) When the governor makes a new appointment or reappointment under Subsection (3)(a), or a vacancy appointment under Subsection (4)(a), the governor's new appointment, reappointment, or vacancy appointment shall be made with the advice and consent of the Senate in accordance with Title 63G, Chapter 24, Part 2, Vacancies.
- (6)
  - (a) The board shall appoint its chair from the membership.
  - (b) Four members of the board shall constitute a quorum for the transaction of business and the holding of hearings.
- (7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (8) A member shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.

Amended by Chapter 57, 2025 General Session

#### **40-6-5 Jurisdiction of board -- Rules.**

- (1) The board has jurisdiction over all persons and property necessary to enforce this chapter. The board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) The board shall make rules and orders as necessary to administer the following provisions:
  - (a) Ownership of all facilities for the production, storage, treatment, transportation, refining, or processing of oil and gas shall be identified.

- (b) Well logs, directional surveys, and reports on well location, drilling, and production shall be made and filed with the division. Logs of wells marked "confidential" shall be kept confidential for one year after the date on which the log is required to be filed, unless the operator gives written permission to release the log at an earlier date. Production reports shall be:
  - (i) filed monthly;
  - (ii) accurate; and
  - (iii) in a form that reasonably serves the needs of state agencies and private fee owners.
- (c) Monthly reports from gas processing plants shall be filed with the division.
- (d) Wells shall be drilled, cased, cemented, operated, and plugged in such manner as to prevent:
  - (i) the escape of oil, gas, or water out of the reservoir in which they are found into another formation;
  - (ii) the detrimental intrusion of water into an oil or gas reservoir;
  - (iii) the pollution of fresh water supplies by oil, gas, or salt water;
  - (iv) blowouts;
  - (v) cavings;
  - (vi) seepages;
  - (vii) fires; and
  - (viii) unreasonable:
    - (A) loss of a surface land owner's crops on surface land;
    - (B) loss of value of existing improvements owned by a surface land owner on surface land; and
    - (C) permanent damage to surface land.
- (e) The drilling of wells may not commence without an adequate and approved supply of water as required by Title 73, Chapter 3, Appropriation. This Subsection (2)(e) is not intended to impose additional legal requirements, but to assure that existing legal requirements concerning the use of water have been met before the commencement of drilling.
- (f) Subject to Subsection (9), an operator shall furnish a reasonable performance bond or other good and sufficient surety, conditioned for the performance of the duty to:
  - (i) plug each dry or abandoned well;
  - (ii) repair each well causing waste or pollution;
  - (iii) maintain and restore the well site; and
  - (iv) except as provided in Subsection (8), protect a surface land owner against unreasonable:
    - (A) loss of a surface land owner's crops on surface land;
    - (B) loss of value of existing improvements owned by a surface land owner on surface land; and
    - (C) permanent damage to surface land.
- (g) Production from wells shall be separated into oil and gas and measured by means and upon standards that are prescribed by the board and reflect current industry standards.
- (h) Crude oil obtained from any reserve pit, disposal pond or pit, or similar facility, and any accumulation of nonmerchantable waste crude oil shall be treated and processed, as prescribed by the board.
- (i) Any person who produces, sells, purchases, acquires, stores, transports, refines, or processes oil or gas or injects fluids for cycling, pressure maintenance, secondary or enhanced recovery, or salt water disposal in this state shall maintain complete and accurate records of the quantities produced, sold, purchased, acquired, stored, transported, refined, processed, or injected for a period of at least six years. The records shall be available for examination by the board or the board's agents at any reasonable time. Rules enacted to administer this Subsection (2)(i) shall be consistent with applicable federal requirements.

- (j) Any person with an interest in a lease shall be notified when all or part of that interest in the lease is sold or transferred.
  - (k) The assessment and collection of administrative penalties is consistent with Section 40-6-11.
  - (l) The board shall regulate the disposition, transfer, use, transport, recycling, treatment, and disposal by injection of produced water, as defined in Section 40-12-101, during, or for reuse in an oil and gas activity, as defined in Section 40-6-2.5, including disposal by injection pursuant to authority delegated to the board by the United States Environmental Protection Agency to be done in a manner that protects surface water and fresh water resources.
- (3) The board has the authority to regulate:
- (a) all operations for and related to the production of oil or gas including:
    - (i) drilling, testing, equipping, completing, operating, producing, and plugging of wells; and
    - (ii) reclamation of sites;
  - (b) the spacing and location of wells;
  - (c) operations to increase ultimate recovery, such as:
    - (i) cycling of gas;
    - (ii) the maintenance of pressure; and
    - (iii) the introduction of gas, water, or other substances into a reservoir;
  - (d) the disposal of salt water and oil-field wastes;
  - (e) the underground and surface storage of oil, gas, or products; and
  - (f) the flaring of gas from an oil well.
- (4) For the purposes of administering this chapter, the board may designate:
- (a) wells as:
    - (i) oil wells; or
    - (ii) gas wells; and
  - (b) pools as:
    - (i) oil pools; or
    - (ii) gas pools.
- (5) The board has exclusive jurisdiction over:
- (a) class II injection wells, as defined by the federal Environmental Protection Agency or a successor agency;
  - (b) pits and ponds in relation to these injection wells;
  - (c) when granted primacy by the Environmental Protection Agency, class VI injection wells, as defined by the Environmental Protection Agency or a successor agency; and
  - (d) storage facilities, as that term is defined in Section 40-11-1.
- (6) The board has jurisdiction:
- (a) to hear questions regarding multiple mineral development conflicts with oil and gas operations if there:
    - (i) is potential injury to other mineral deposits on the same lands; or
    - (ii) are simultaneous or concurrent operations conducted by other mineral owners or lessees affecting the same lands; and
  - (b) to enter the board's order or rule with respect to those questions.
- (7) The board has enforcement powers with respect to operators of minerals other than oil and gas as are set forth in Section 40-6-11, for the sole purpose of enforcing multiple mineral development issues.
- (8) Subsection (2)(f)(iv) does not apply if the surface land owner is a party to, or a successor of a party to:
- (a) a lease of the underlying privately owned oil and gas;
  - (b) a surface use agreement applicable to the surface land owner's surface land; or

- (c) a contract, waiver, or release addressing an owner's or operator's use of the surface land owner's surface land.
- (9)
  - (a) The board shall review rules made under Subsection (2)(f) to determine whether the rules provide adequate fiscal security for the fiscal risks to the state related to oil and gas operations.
  - (b) During the board's review under this Subsection (9), the board may consider the bonding schemes of other states.
- (10) The board may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, related to procedures under Title 19, Chapter 12, Pollution Control Act, for certification by the director of the division.

Amended by Chapter 58, 2024 General Session

Amended by Chapter 190, 2024 General Session

**40-6-6 Drilling units -- Establishment by board -- Modifications -- Prohibitions.**

- (1) The board may order the establishment of drilling units for a pool.
- (2) Within each drilling unit, only one well may be drilled for production from the common source of supply, except as provided in Subsections (6) and (7).
- (3) A drilling unit may not be smaller than the maximum area that can be efficiently and economically drained by one well.
- (4)
  - (a) Each drilling unit within a pool shall be of uniform size and shape, unless the board finds that it must make an exception due to geologic, geographic, or other factors.
  - (b) If the board finds it necessary to divide a pool into zones and establish drilling units for each zone, drilling units may differ in size and shape for each zone.
- (5) An order of the board that establishes drilling units for a pool shall:
  - (a) be made upon terms and conditions that are just and reasonable;
  - (b) include all lands determined by the board to overlay the pool;
  - (c) specify the acreage and shape of each drilling unit as determined by the board; and
  - (d) specify the location of the well in terms of distance from drilling unit boundaries and other wells.
- (6) The board may establish a drilling unit and concurrently authorize the drilling of more than one well in a drilling unit if the board finds that:
  - (a) engineering or geologic characteristics justify the drilling of more than one well in that drilling unit; and
  - (b) the drilling of more than one well in the drilling unit will not result in waste.
- (7) The board may modify an order that establishes drilling units for a pool to provide for:
  - (a) an exception to the authorized location of a well;
  - (b) the inclusion of additional areas which the board determines overlays the pool;
  - (c) the increase or decrease of the size of drilling units; or
  - (d) the drilling of additional wells within drilling units.
- (8)
  - (a) An order of the board that establishes a drilling unit may be made effective retroactively to the date of first production of an existing well located within the drilling unit if no party to the board's proceeding objects to the retroactive application.
  - (b) An order made retroactive under this section is binding upon a party owning an interest in the drilling unit who receives proper notice of the board's proceeding.



- (9)
  - (a) After an order establishing drilling units has been entered by the board, the drilling of a well into the pool at a location other than that authorized by the order is prohibited.
  - (b) The operation of a well drilled in violation of an order fixing drilling units is prohibited.

Amended by Chapter 220, 2017 General Session

**40-6-6.5 Pooling of interests for the development and operation of a drilling unit -- Board may order pooling of interests -- Payment of costs and royalty interests -- Monthly accounting.**

- (1) Two or more owners within a drilling unit may bring together their interests for the development and operation of the drilling unit.
- (2)
  - (a) In the absence of a written agreement for pooling, including a joint operating agreement, the board may enter an order pooling all interests in the drilling unit for the development and operation of the drilling unit.
  - (b) The order shall be made upon terms and conditions that are just and reasonable.
  - (c) The board may adopt terms appearing in a joint operating agreement:
    - (i) for the drilling unit that is in effect between the consenting owners;
    - (ii) submitted by any party to the proceeding; or
    - (iii) submitted by its own motion.
- (3)
  - (a) Operations incident to the drilling of a well upon any portion of a drilling unit covered by a pooling order shall be deemed for all purposes to be the conduct of the operations upon each separately owned tract in the drilling unit by the several owners.
  - (b) The portion of the production allocated or applicable to a separately owned tract included in a drilling unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from that tract by a well drilled on it.
- (4)
  - (a)
    - (i) Each pooling order shall provide for the payment of just and reasonable costs incurred in the drilling and operating of the drilling unit, including:
      - (A) the costs of drilling, completing, equipping, producing, gathering, transporting, processing, marketing, and storage facilities;
      - (B) reasonable charges for the administration and supervision of operations; and
      - (C) other costs customarily incurred in the industry.
    - (ii) An owner is not liable under a pooling order for costs or losses resulting from the gross negligence or willful misconduct of the operator.
  - (b) Each pooling order shall provide for reimbursement to the consenting owners for any nonconsenting owner's share of the costs out of production from the drilling unit attributable to the nonconsenting owner's tract.
  - (c) Each pooling order shall provide that each consenting owner shall own and be entitled to receive, subject to royalty or similar obligations:
    - (i) the share of the production of the well applicable to the consenting owner's interest in the drilling unit; and
    - (ii) unless the consenting owner has agreed otherwise, the consenting owner's proportionate part of the nonconsenting owner's share of the production until costs are recovered as provided in Subsection (4)(d).

- (d)
  - (i) Each pooling order shall provide that each nonconsenting owner shall be entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the nonconsenting owner's interest in the drilling unit after the consenting owners have recovered from the nonconsenting owner's share of production the following amounts less any cash contributions made by the nonconsenting owner:
    - (A) 100% of the nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections, including stock tanks, separators, treaters, pumping equipment, and piping;
    - (B) 100% of the nonconsenting owner's share of the estimated cost to plug and abandon the well as determined by the board;
    - (C) 100% 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 all costs; and
    - (D) an amount to be determined by the board but not less than 150% nor greater than 400% of the nonconsenting owner's share of the costs of staking the location, wellsite preparation, rights-of-way, rigging up, drilling, reworking, recompleting, deepening or plugging back, testing, and completing, and the cost of equipment in the well to and including the wellhead connections.
  - (ii) The nonconsenting owner's share of the costs specified in Subsection (4)(d)(i) is that interest which would have been chargeable to the nonconsenting owner had the nonconsenting owner initially agreed to pay the nonconsenting owner's share of the costs of the well from commencement of the operation.
  - (iii) A reasonable interest charge may be included if the board finds it appropriate.
- (e) If there is any dispute about costs, the board shall determine the proper costs.
- (5) If a nonconsenting owner's tract in the drilling unit is subject to a lease or other contract for the development of oil and gas, the pooling order shall provide that the consenting owners shall pay any royalty interest or other interest in the tract not subject to the deduction of the costs of production from the production attributable to that tract.
- (6)
  - (a) If a nonconsenting owner's tract in the drilling unit is not subject to a lease or other contract for the development of oil and gas, the pooling order shall provide that the nonconsenting owner shall receive as a royalty:
    - (i) the acreage weighted average landowner's royalty based on each leased fee and privately owned tract within the drilling unit, proportionately reduced by the percentage of the nonconsenting owner's interest in the drilling unit; or
    - (ii) if there is no leased fee or privately owned tract within the drilling unit other than the one owned by the nonconsenting owner, 16-2/3% proportionately reduced by the percentage of the nonconsenting owner's interest in the drilling unit.
  - (b) The royalty shall be:
    - (i) determined prior to the commencement of drilling; and
    - (ii) paid from production attributable to each tract until the consenting owners have recovered the costs specified in Subsection (4)(d).
- (7) Once the consenting owners have recovered the costs, as described in Subsection (6)(b)(ii), the royalty shall be merged back into the nonconsenting owner's working interest and shall be terminated.
- (8) The operator of a well under a pooling order in which there is a nonconsenting owner shall furnish the nonconsenting owner with monthly statements specifying:

- (a) costs incurred;
  - (b) the quantity of oil or gas produced; and
  - (c) the amount of oil and gas proceeds realized from the sale of the production during the preceding month.
- (9) Each pooling order shall provide that when the consenting owners recover from a nonconsenting owner's relinquished interest the amounts provided for in Subsection (4)(d):
- (a) the relinquished interest of the nonconsenting owner shall automatically revert to him;
  - (b) the nonconsenting owner shall from that time:
    - (i) own the same interest in the well and the production from it; and
    - (ii) be liable for the further costs of the operation as if he had participated in the initial drilling and operation; and
  - (c) costs are payable out of production unless otherwise agreed between the nonconsenting owner and the operator.
- (10) Each pooling order shall provide that in any circumstance where the nonconsenting owner has relinquished his share of production to consenting owners or at any time fails to take his share of production in-kind when he is entitled to do so, the nonconsenting owner is entitled to:
- (a) an accounting of the oil and gas proceeds applicable to his relinquished share of production; and
  - (b) payment of the oil and gas proceeds applicable to that share of production not taken in-kind, net of costs.
- (11)
- (a) A pooling order may be made effective retroactively to the date of first production of a well to which the pooling order applies, subject to Subsection (11)(b).
  - (b) If the retroactive date predates the board's order establishing the drilling unit, the retroactive date is authorized only if:
    - (i) no party to the board's proceeding objects to the retroactive application; or
    - (ii) an objection is received by the board and the board finds a party has engaged in inequitable conduct prejudicing another party's correlative right.
  - (c) A pooling order made retroactive under this section is binding upon a party owning an interest in the drilling unit who receives proper notice of the board's proceeding.
- (12) Except as otherwise provided by a rule made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the terms and conditions of the board's initial order pooling all interests in a drilling unit, including the terms and conditions of a joint operating agreement as adopted by the board, shall apply to all subsequently drilled wells in the drilling unit, except as modified by:
- (a) an accounting for actual costs incurred for each subsequently drilled well in the drilling unit;
  - (b) an accounting for the consenting or nonconsenting status of the owner of each subsequently drilled well in the drilling unit; and
  - (c) the board after the filing of and hearing upon a petition filed by an affected owner desiring a modification.

Amended by Chapter 246, 2018 General Session

**40-6-7 Agreements for repressuring or pressure maintenance or cycling or recycling operations -- Plan for development and operation of pool or field.**

- (1) An agreement for repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas, or for carrying on any other methods of unit or cooperative development or operation of a

field or pool or a part of either, is authorized and may be performed, and shall not be held or construed to violate any statutes relating to trusts, monopolies, or contracts and combinations in restraint of trade, if the agreement is approved by the board as being in the public interest and promotes conservation, increases ultimate recovery and prevents waste of oil or gas provided the agreement protects the correlative rights of each owner or producer.

- (2) A plan for the development and operation of a pool or field shall be presented to the board and may be approved after notice and hearing.

Enacted by Chapter 205, 1983 General Session

**40-6-8 Field or pool units -- Procedure for establishment -- Operation.**

- (1) The board may 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 board shall make an order providing for the unit operation of a pool or part of it, if the board finds that:
  - (a) Such operation is reasonably necessary for the purposes of this chapter; and
  - (b) The value of the estimated additional recovery of oil or gas substantially exceeds the estimated additional cost incident to conducting such operations.
- (3) The order shall prescribe a plan for unit operations that shall include:
  - (a) a description of the lands and of the pool or pools or parts of them to be so operated, termed the unit area;
  - (b) a statement of the nature of the operations contemplated;
  - (c) an allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no such agreement, the board shall determine the relative value, from evidence introduced at the hearing of the separately owned tracts in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the relative value of each tract so determined bears to the relative value of all tracts in the unit area;
  - (d) a provision for adjustment among the owners of the unit area (not including royalty owners) of their respective investment in wells, tanks, pumps, machinery, materials, equipment, and other things and services of value attributable to the unit operations. The amount to be charged unit operations for any such item shall be determined by the owners of the unit area (not including royalty owners); but if the owners of the unit area are unable to agree upon the amount or correctness, the board shall determine them. The net amount charged against the owner of an interest in a separately owned tract shall be considered expense of unit operation chargeable against his interest in the tract. The adjustments provided for may be treated separately and handled by agreements separate from the unitization agreement;
  - (e) a provision providing how the costs of unit operations, including capital investments, shall be determined and charged to the separately owned tracts and how these costs shall be paid, including a provision providing a procedure for the unit production allocated to an owner who does not pay the share of the cost of unit operations charged to such owner, or the interest of such owner, to be sold and the proceeds applied to the payment of such costs. The operator of the unit shall have a first and prior lien for costs incurred pursuant to the plan of unitization upon each owner's oil and gas rights and his share of unitized production to secure the payment of such owner's proportionate part of the cost of developing and operating the unit area. This lien may be enforced in the same manner as provided by Title

38, Chapter 1a, Part 7, Enforcement of Preconstruction and Construction Liens. For such purposes any nonconsenting owner shall be deemed to have contracted with the unit operator for his proportionate part of the cost of developing and operating the unit area. A transfer or conversion of any owner's interest or any portion of it, however accomplished, after the effective date of the order creating the unit, shall not relieve the transferred interest of the operator's lien on said interest for the cost and expense of unit operations;

- (f) a provision, if necessary, for carrying or otherwise financing any owner who elects to be carried or otherwise financed, allowing a reasonable interest charge for such service payable out of such owner's share of the production;
  - (g) a provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a percentage vote corresponding to the percentage of the costs of unit operations chargeable against the interest of the owner;
  - (h) the time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate;
  - (i) such additional provisions that are found to be appropriate for carrying on the unit operations, and for the protection of correlative rights; and
  - (j) the designation of a unit operator.
- (4) No order of the board providing for unit operations of a pool or pools shall become effective unless and until the plan for unit operations prescribed by the division has been approved in writing by those owners who, under the board's order, will be required to pay 70% of the costs of the unit operation, and also by the owners of 70% of the production or proceeds that will be credited to interests which are free of cost, such as royalties, overriding royalties, and production payments, and the board 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 persons owning required percentage of interest in that unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, the order shall be ineffective and shall be revoked by the board unless for good cause shown the board extends this time.
- (5) An order providing for unit operations may be amended by an order made by the board in the same manner and subject to the same conditions as an original order providing for unit operations, provided:
- (a) If such an amendment affects only the rights and interests of the owners, the approval of the amendment by the owners of royalty, overriding royalty, production payments and other such interests which are free of costs shall not be required.
  - (b) No such order of amendment shall change the percentage for the allocation of oil and gas as established for any separately owned tract by the original order, or change the percentage for allocation of cost as established for any separately owned tract by the original order.
- (6) The board, by an order, may provide for the unit operation of a pool or pools or parts thereof that embrace a unit area established by a previous order of the division. The order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production allocated shall then be allocated among the separately owned tracts included in the previously established unit area in the same proportions of those specified in the previous order.
- (7) An order may provide for unit operations on less than the whole of a pool where the unit area is of such size and shape as may be reasonably required for that purpose, and the conduct will have no adverse effect upon other portions of the pool.
- (8) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such

operations upon each separately owned tract in the unit area by the several owners. The portions of the unit production allocated to a separately owned tract in a unit area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled. Operations conducted pursuant to an order of the board providing for unit operations shall constitute a fulfillment of all the express or implied obligations for each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the board.

- (9) The portion of the unit production allocated to any tract, and the proceeds from the sale, shall be the property and income of the several owners, subject to the rights of royalty owners, to whom, or to whose credit, they are allocated or payable under the order providing for unit operations.
- (10) No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.
- (11) Except to the extent that the parties affected agree and as provided in Subsection (3)(e), no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area and shall be the property of the owners in the proportion that the expenses of unit operations are charged, unless otherwise provided in the plan of unit operation.
- (12) This section shall apply only to field or pool units and shall not apply to the unitization of interests within a drilling unit as may be authorized and governed under the provisions of Section 40-6-6.

Amended by Chapter 278, 2012 General Session

**40-6-9 Proceeds from sale of production -- Payment of proceeds -- Requirements -- Proceeding on petition to determine cause of nonpayment -- Remedies -- Penalties.**

- (1)
  - (a) The oil and gas proceeds derived from the sale of production from any well producing oil or gas in the state shall be paid to any person legally entitled to the payment of the proceeds not later than 180 days after the first day of the month following the date of the first sale and thereafter not later than 30 days after the end of the calendar month within which payment is received by the payor for production, unless other periods or arrangements are provided for in a valid contract with the person entitled to the proceeds.
  - (b) The payment shall be made directly to the person entitled to the payment by the payor.
  - (c) The payment is considered to have been made upon deposit in the United States mail.
- (2) Payments shall be remitted to any person entitled to oil and gas proceeds annually for the aggregate of up to 12 months accumulation of proceeds, if the total amount owed is \$100 or less.
- (3)
  - (a) Any delay in determining whether a person is legally entitled to an interest in the oil and gas proceeds does not affect payments to other persons entitled to payment.
  - (b)
    - (i) If accrued payments cannot be made within the time limits specified in Subsection (1) or (2), the payor shall deposit all oil and gas proceeds credited to the eventual oil and gas

proceeds owner to an escrow account in a federally insured bank or savings and loan institution using a standard escrow document form.

- (ii) The deposit shall earn interest at the highest rate being offered by that institution for the amount and term of similar demand deposits.
  - (iii) The escrow agent may commingle money received into escrow from any one lessee or operator, purchaser, or other person legally responsible for payment.
  - (iv) Payment of principal and accrued interest from the escrow account shall be made by the escrow agent to the person legally entitled to them within 30 days from the date of receipt by the escrow agent of final legal determination of entitlement to the payment.
  - (v) Applicable escrow fees shall be deducted from the payments.
- (4) Any person entitled to oil and gas proceeds may file a petition with the board to conduct a hearing to determine why the proceeds have not been paid.
- (5) Upon receipt of the petition, the board shall set the matter for investigation and negotiation by the division within 60 days.
- (6)
- (a) If the matter cannot be resolved by negotiation as of that date, the board may set a hearing within 30 days.
  - (b) If the board does not set a hearing, any information gathered during the investigation and negotiation shall be given to the petitioner who may then seek a remedy in a court of competent jurisdiction.
- (7)
- (a) If, after a hearing, the board finds the proceeds have not been deposited in an interest bearing escrow account in accordance with Subsection (3), the board may order that:
    - (i) a complete accounting be made; and
    - (ii) the proceeds be subject to an interest rate of 1-1/2% per month, as a substitute for an escrow account interest rate, accruing from the date the payment should have been suspended in accordance with Subsection (3).
  - (b) If, after a hearing, the board finds the delay of payment is without reasonable justification, the board may:
    - (i) if the proceeds have been deposited in an interest bearing escrow account in accordance with Subsection (3):
      - (A) order a complete accounting;
      - (B) require the proceeds and accruing interest to remain in the escrow account; and
      - (C) assess a penalty of up to 25% of the total proceeds and interest in the escrow account; or
    - (ii) if the proceeds have not been deposited in an interest bearing escrow account in accordance with Subsection (3), assess a penalty of up to 25% of the total proceeds and interest as determined under Subsection (7)(a).
- (c)
- (i) Upon finding that the delay of payment is without reasonable justification, the board shall set a date not later than 90 days from the hearing for final distribution of the total sum.
  - (ii) If payment is not made by the required date, the total proceeds, interest, and any penalty as provided in Subsection (7)(b) shall be subject to interest at a rate of 1-1/2% per month until paid.
- (d) If, after a hearing, the board finds the delay of payment is with reasonable justification and the proceeds have been deposited in an interest bearing escrow account in accordance with Subsection (3), the payor may not be required to make an accounting or payment of appropriately suspended proceeds until the condition which justified suspension has been satisfied.

- (8) The circumstances under which the board may find the suspension of payment of proceeds is made with reasonable justification, such that the penalty provisions of Subsections (7)(b) and (7)(c)(ii) do not apply, include, but are not limited to, the following:
- (a) the payor:
    - (i) fails to make the payment in good faith reliance upon a title opinion by a licensed Utah attorney objecting to the lack of good and marketable title of record of the person claiming entitlement to payment; and
    - (ii) furnishes a copy of the relevant portions of the opinion to the person for necessary curative action;
  - (b) the payor receives information which:
    - (i) in the payor's good faith judgment, brings into question the entitlement of the person claiming the right to the payment to receive that payment;
    - (ii) has rendered the title unmarketable; or
    - (iii) may expose the payor to the risk of liability to third parties if the payment is made;
  - (c) the total amount of oil and gas proceeds in possession of the payor owed to the person making claim to payment is less than \$100 at the end of any month; or
  - (d) the person entitled to payment has failed or refused to execute a division or transfer order acknowledging the proper interest to which the person claims to be entitled and setting forth the mailing address to which payment may be directed, provided the division or transfer order does not alter or amend the terms of the lease.
- (9) If the circumstances described in Subsection (8)(a) or (b) arise, the payor may:
- (a) suspend and escrow the payments in accordance with Subsection (3); or
  - (b) at the request and expense of the person claiming entitlement to the payment, make the payment into court on an interpleader action to resolve the claim and avoid liability under this chapter.

Amended by Chapter 324, 2010 General Session

**40-6-9.1 Payment information to royalty owners.**

- (1) When payment is made to an owner of a royalty interest for the sale of oil or gas produced from that royalty interest pursuant to the requirements of Section 40-6-9, the following information shall be included on the payor's check stub or on an attachment to the form of payment:
- (a) the lease, property, or well name, and any lease, property, or well identification number from which production is attributed;
  - (b) the month and year of the sales included in the payment;
  - (c) the total volume of oil or gas sold, as measured by the means and upon the standards prescribed by the board pursuant to Subsection 40-6-5(2)(g);
  - (d) the average price per unit of oil or gas sold;
  - (e) the total amount of state severance, ad valorem, and other production taxes;
  - (f) a list of any other deductions or adjustments;
  - (g) the net value of total sales after taxes are deducted;
  - (h) the royalty owner's interest, expressed as a decimal number, in sales from the lease, property, or well;
  - (i) the royalty owner's share of the total value of sales prior to any deductions;
  - (j) the royalty owner's proportionate share of the sales value less the royalty owner's proportionate share of the deductions, as applicable; and
  - (k) an address at which additional information pertaining to the royalty owner's interest in production may be obtained and questions may be answered.



- (2)
  - (a) A royalty owner who fails to receive the information required by this section may notify the board by certified mail of the problem and request that the division conduct an investigation.
  - (b) The division shall conduct the investigation and report to the board concerning:
    - (i) whether the matter has been resolved; or
    - (ii) whether further action is necessary and its recommendations for resolution of the matter.
  - (c) The board may take any action it considers necessary to resolve the matter pursuant to the provisions of this chapter.
- (3) A royalty owner damaged by a violation of this section may proceed as provided in Subsection 40-6-11(7).

Enacted by Chapter 132, 1995 General Session

**40-6-9.5 Permits for crude oil production -- Application -- Bond requirement -- Closure of facilities -- Availability of records.**

- (1) The division may issue permits authorizing construction, operation, maintenance, and cessation of treating facilities and operations covered by Subsection 40-6-5(2)(h) and to approve, as part of that permit, post-cessation reclamation of the site.
- (2)
  - (a) An owner and operator of a facility described in Subsection 40-6-5(2)(h) or planning to construct, operate, or maintain a facility described in Subsection 40-6-5(2)(h) shall submit to the division an application stating in detail:
    - (i) the location, type, and capacity of the facility contemplated;
    - (ii) the extent and location of area disturbed or to be disturbed including any pits, ponds, or lands associated with the facility;
    - (iii) a plan for reclamation of the site; and
    - (iv) other materials required by the division.
  - (b) Existing facilities described in Subsection 40-6-5(2)(h) shall submit plans by July 28, 1985.
  - (c) Application for all planned facilities must be approved and a permit issued before any ground clearing or construction may occur.
- (3)
  - (a) As a condition for approval of a permit, the owner and operator shall post a bond in an amount determined by the division to cover reclamation costs for the site consistent with rules made to implement Subsection 40-6-5(2)(f).
  - (b) Approval of a permit is also conditioned upon compliance with the laws, rules, and orders of the board.
  - (c) Failure to post the bond is considered sufficient grounds to deny a permit.
- (4) The board may order the closure of a facility described in Subsection 40-6-5(2)(h) if:
  - (a) an application is not forthcoming in the time allowed in Subsection (2);
  - (b) a bond is not posted;
  - (c) a violation of the rules and regulations of other state or federal agencies exists; or
  - (d) for other material and substantial cause.
- (5) The owner and operator are subject to applicable state, federal, and local rules and regulations.
- (6) The records required to be kept by Subsection 40-6-5(2)(i) shall be available for inspection and audit by the board or the board's agents during reasonable working hours.

Amended by Chapter 375, 2020 General Session

**40-6-10 Procedures -- Adjudicative proceedings -- Emergency orders -- Hearing examiners.**

- (1)
  - (a) The Board of Oil, Gas, and Mining and the Division of Oil, Gas, and Mining shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.
  - (b) The board shall enact rules governing its practice and procedure that are not inconsistent with Title 63G, Chapter 4, Administrative Procedures Act.
- (2) When an emergency requiring immediate action is found by the division director or any board member to exist, the division director or board member may issue an emergency order according to the requirements and procedures of Title 63G, Chapter 4, Administrative Procedures Act.
- (3) A notice required by this chapter, except as otherwise provided, shall be given at the election of the board by:
  - (a) personal service; or
  - (b)
    - (i) one publication in:
      - (A) a daily newspaper of general circulation in the city of Salt Lake and county of Salt Lake, Utah; and
      - (B) all newspapers of general circulation published in the county where the land is affected, or some part of the land is situated; and
    - (ii) electronic publication in accordance with Section 45-1-101.
- (4)
  - (a) Any order made by the board is effective on issuance.
  - (b) All rules and orders issued by the board shall be:
    - (i) in writing;
    - (ii) entered in full in books to be kept by the board for that purpose;
    - (iii) indexed; and
    - (iv) public records open for inspection at all times during reasonable office hours.
  - (c) A copy of any rule, finding of fact, or order, certified by the board or by the division director, shall be received in evidence in all courts of this state with the same effect as the original.
- (5) The board may act upon its own motion or upon the petition of any interested person.
- (6)
  - (a) The board may appoint a hearing examiner to take evidence and to recommend findings of fact and conclusions of law to the board.
  - (b) Any member of the board, division staff, or any other person designated by the board may serve as a hearing examiner.
  - (c) The board may enter an order based on the recommendations of the examiner.

Amended by Chapter 5, 2009 Special Session 1

Amended by Chapter 5, 2009 Special Session 1

**40-6-11 Power to summon witnesses, administer oaths and require production of records -- Enforcement -- Penalties for violation of chapter or rules -- Illegal oil or gas -- Civil liability -- Restricted account.**

- (1) At a hearing or investigation conducted by the board, the board may:
  - (a) summon witnesses;
  - (b) administer oaths; and
  - (c) require the production of records, books, and documents for examination.

- (2)
  - (a) If a person fails or refuses to comply with a subpoena issued by the board, or fails or refuses to testify about any matter, the board may apply to a district court in the state for an order compelling that person to:
    - (i) comply with the subpoena;
    - (ii) attend before the board;
    - (iii) produce the subpoenaed records, books, and documents for examination; and
    - (iv) give the person's testimony.
  - (b) The court may punish the person for contempt as if the person disobeyed a subpoena issued by the court, or if the person refused to testify in a court.
- (3)
  - (a) Whenever it appears that a person is violating this chapter or a rule or order made under the authority of this chapter, the board may issue an order requiring compliance within a period not to exceed 45 days.
  - (b) The board may bring suit in the name of the state against a person violating this chapter, or rules or orders made under the authority of this chapter if:
    - (i) the violation continues after expiration of the time period granted in Subsection (3)(a);
    - (ii) the violation presents an immediate threat to public health, safety, or welfare; or
    - (iii) the violation would cause waste.
- (4)
  - (a) Subject to the requirements of this Subsection (4), if the board or division determines, after an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, that a person has violated this chapter, or a permit, rule, or order made under this chapter, the board or division may impose an administrative penalty on the person not to exceed \$5,000 per day for each day of violation.
  - (b) If the board determines that the violation is willful, the board may impose an administrative penalty on that person not to exceed \$10,000 for each day of violation.
  - (c) The board shall, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish a standardized violation schedule to set the violations and the associated administrative penalty for each violation.
  - (d) A single violation shall result in a single administrative penalty, that may be imposed on a daily basis for each day that the violation remains unresolved following the assessment of the administrative penalty or completion of the appeal.
  - (e) Before initiation of an adjudicative proceeding or assessing an administrative penalty, and except for circumstances provided in Subsection (4)(b), the division shall provide a notice of violation to the owner and operator in the form and manner set forth by board rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. The rule made under this Subsection (4)(e) shall, at a minimum, require the notice to set forth the actions necessary to cure the violation and a reasonable period of time to cure the violation.
  - (f) Should an owner or operator fail to cure the violation as set out in the notice of violation under Subsection (4)(e), the division may initiate an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
  - (g) Administrative penalties assessed by the division or the board may not exceed \$200,000 per violation per person.
  - (h) An administrative penalty assessed by the division may be appealed to the board within 30 days of the assessment.
  - (i) If a violation remains unabated and the maximum penalty amount has accrued, the division may request an emergency order from the board requiring the operator or person to suspend

operations of the well or facility in violation. Operations may only resume upon abatement of the violation.

(5) If ordered to do so by the board, the director of the division may order the immediate closure or shutdown of any well that is operating in violation of this chapter, if the closure or shutdown will not cause waste or is necessary because of an immediate threat to public health, safety, or welfare.

(6)

(a) A person may not sell, purchase, acquire, transport, refine, process, or handle illegal oil, gas, or product, if the person knows or has reason to know that the oil, gas, or product is illegal.

(b) The court in the district where the illegal oil, gas, or product is found, shall, after notice and hearing in an action brought by the board, order the product to be seized and sold, and the proceeds returned or held for the legal owner.

(7)

(a) This chapter, a suit by or against the board, and a violation charged or asserted against a person under this chapter, or a rule or order issued under the authority of this chapter, may not impair, abridge, or delay a cause of action for damages that a person may have or assert against any person violating this chapter, or a rule or order issued under the authority of this chapter.

(b) A person damaged by a violation may sue for and recover whatever damages that the person otherwise may be entitled to receive.

(8) After an administrative penalty is assessed under this chapter, the division may collect that administrative penalty as if the administrative penalty were a judgment issued by a court of law so long as the penalized person was provided with notice of the violation, a reasonable opportunity to cure, and an opportunity for a hearing under Title 63G, Chapter 4, Administrative Procedures Act, and the administrative and appellate remedies are exhausted.

(9)

(a) There is created within the General Fund a restricted account known as the "Oil and Gas Administrative Penalties Account."

(b) The Oil and Gas Administrative Penalties Account shall consist of:

(i) administrative penalties collected by the board or division under this chapter; and

(ii) interest earned on the Oil and Gas Administrative Penalties Account.

(c) The Oil and Gas Administrative Penalties Account shall earn interest.

(d) Subject to appropriation by the Legislature, the division may use money in the Oil and Gas Administrative Penalties Account to offset:

(i) risks to the public health, safety, or welfare caused by oil and gas operations for impacts and activities covered by bonding; or

(ii) other direct impacts to the general public from oil and gas development as identified by the board and the executive director of the Department of Natural Resources at a public hearing that are not otherwise addressed through performance bonds allowed by Subsection 40-6-5(2)(f).

(e) In accordance with Section 63J-1-602.1, appropriations from the Oil and Gas Administrative Penalty Account are nonlapsing.

Amended by Chapter 375, 2020 General Session

#### **40-6-12 Evasion of chapter or orders -- Penalties -- Limitation of actions.**

(1)

- (a) A person is guilty of a class A misdemeanor if, for the purpose of evading this chapter or any order of the board, he is convicted of any of the following:
  - (i) making or causing to be made any false entry in any report, record, account, or memorandum required by this chapter or by any order;
  - (ii) omitting or causing to be omitted from any report, record, account, or memorandum, full, true, and correct entries as required by this chapter or by any order; or
  - (iii) removing from this state or destroying, mutilating, altering, or falsifying any record, account, or memorandum.
- (b) Upon conviction under Subsection (1), a person is subject to a fine of not more than \$5,000 or imprisonment for a term not exceeding six months, or to both fine and imprisonment.
- (2) Any suit, action, or other proceeding based upon a violation of this section may be commenced only within one year from the date of the alleged violation.

Amended by Chapter 330, 2009 General Session

**40-6-13 Restrictions of production not authorized.**

This act shall never be construed to require, permit or authorize the board or any court to make, enter or enforce any order, rule, regulation, or judgment requiring restriction of production of any pool or of any well (except a well drilled in violation of Section 40-6-6 hereof) to an amount less than the well or pool can produce unless such restriction is necessary to prevent waste and protect correlative rights, or the operation of a well without sufficient oil or gas production to cover current operating costs and provide a reasonable return, without regard to original drilling costs.

Enacted by Chapter 205, 1983 General Session

**40-6-14 Fee on oil and gas -- Payment of fee -- Collection -- Penalty and interest on delinquencies -- Payment when product taken in-kind -- Interests exempt.**

- (1)
  - (a) There is levied a fee as provided in Subsection (1)(b) for oil and gas:
    - (i) produced; and
    - (ii)
      - (A) saved;
      - (B) sold; or
      - (C) transported from the field in Utah where the oil or gas is produced.
  - (b) The fee imposed under this Subsection (1) is equal to the product of:
    - (i) .002; and
    - (ii) the value of the oil or gas determined in accordance with Section 59-5-103.1.
- (2)
  - (a) The State Tax Commission shall administer the collection of the fee, including any penalties and interest.
  - (b) The money collected shall be deposited in the Oil and Gas Conservation Account created in Section 40-6-14.5.
  - (c) Time periods for the State Tax Commission to allow a refund or assess the fee shall be determined in accordance with Section 59-5-114.
- (3)
  - (a) Each person having an ownership interest in oil or gas at the time of production shall be liable for a proportionate share of the fee equivalent to that person's ownership interest.
  - (b) As used in this section "ownership interest" means any:

- (i) working interest;
  - (ii) royalty interest;
  - (iii) interest in payments out of production; or
  - (iv) any other interest in the oil or gas, or in the proceeds of the oil or gas, subject to the fee.
- (4)
  - (a) The operator, on behalf of the operator and any person having an ownership interest in the oil or gas, shall pay the fee to the State Tax Commission:
    - (i) quarterly; and
    - (ii) as provided in Subsections (4)(b) and (c).
  - (b) For purposes of Subsection (4)(a), the quarterly fee payments are due as follows:
    - (i) for the quarter beginning on January 1 and ending on March 31, on or before June 1;
    - (ii) for the quarter beginning on April 1 and ending on June 30, on or before September 1;
    - (iii) for the quarter beginning on July 1 and ending on September 30, on or before December 1; and
    - (iv) for the quarter beginning on October 1 and ending on December 31, on or before March 1 of the next year.
  - (c) The fee required by this section shall be reported to the State Tax Commission on forms provided by the State Tax Commission.
- (5)
  - (a) Any fee not paid within the time specified shall:
    - (i) carry a penalty as provided in Section 59-1-401; and
    - (ii) bear interest at the rate and in the manner prescribed in Section 59-1-402.
  - (b)
    - (i) The fee, together with the interest, shall be a lien upon the oil or gas against which the fee and interest are levied.
    - (ii) The operator shall deduct from any amounts due to the persons owning an interest in the oil or gas, or in the proceeds at the time of production, a proportionate amount of the charge before making payment to the persons.
- (6)
  - (a) When product is taken in-kind by an interest owner who is not the operator and the operator cannot determine the value of the in-kind product, the operator shall:
    - (i) report 100% of the production;
    - (ii) deduct the product taken in-kind; and
    - (iii) pay the levy on the difference.
  - (b) The interest owner who takes the product in-kind shall file a report and pay the levy on the interest owner's share of production excluded from the operator's report.
- (7) This section shall apply to any interest in oil or gas produced in the state except:
  - (a) any interest of the United States;
  - (b) any interest of the state or a political subdivision of the state in any oil or gas or in the proceeds of the oil or gas;
  - (c) any interest of any Indian or Indian tribe in any oil or gas or in the proceeds produced from land subject to the supervision of the United States; or
  - (d) oil or gas used in producing or drilling operations or for repressuring or recycling purposes.

Amended by Chapter 244, 2004 General Session

**40-6-14.5 Oil and Gas Conservation Account created -- Contents -- Use of account money.**

- (1) There is created within the General Fund a restricted account known as the Oil and Gas Conservation Account.
- (2) The contents of the account shall consist of:
  - (a) revenues from the fee levied under Section 40-6-14, including any penalties or interest charged for delinquent payments; and
  - (b) interest and earnings on account money.
- (3) Account money shall be used to pay for:
  - (a) the administration of this chapter in addition to money from the Division of Oil, Gas, and Mining Restricted Account, created in Section 40-6-23;
  - (b) the plugging and reclamation of abandoned oil or gas wells or bore, core, or exploratory holes for which:
    - (i) there is no reclamation surety; or
    - (ii) the forfeited surety is insufficient for plugging and reclamation; and
  - (c) public educational programs designed to increase knowledge of mineral and petroleum resources and industries.
- (4) Priority in the use of the money shall be given to paying for the administration of this chapter.
- (5) Appropriations made in accordance with Subsections (3)(b) and (c) are nonlapsing.
- (6)
  - (a) The balance of the Oil and Gas Conservation Account at the end of a fiscal year may not exceed 100% of the fiscal year appropriation for Subsection (3)(a).
  - (b) Any excess money at the end of the fiscal year above the balance limit established in Subsection (6)(a) shall be transferred to the General Fund.

Amended by Chapter 401, 2021 General Session

**40-6-15 Division created -- Functions -- Director of division -- Qualifications of program administrators.**

There is created within the Department of Natural Resources the Division of Oil, Gas, and Mining. The division shall implement the policies and orders of the board and perform all other duties delegated by the board.

The director of the Division of Oil, Gas, and Mining shall be appointed by the director of the Department of Natural Resources with the concurrence of the Board of Oil, Gas, and Mining. The director shall be the executive and administrative head of the Division of Oil, Gas, and Mining and shall be a person experienced in administration and knowledgeable in the extraction of oil, gas, and minerals.

Within the division, the person administering the oil and gas program shall have the technical background to efficiently administer that program. The person administering the mining program shall have the technical background to efficiently administer that program.

Amended by Chapter 344, 2009 General Session

**40-6-16 Duties of division.**

In addition to the duties assigned by the board, the division shall:

- (1) develop and implement an inspection program that will include production data, pre-drilling checks, and site security reviews;
- (2) publish a monthly production report;
- (3) publish a monthly gas processing plant report;

- (4) review and evaluate, before a hearing, evidence submitted with the petition to be presented to the board;
- (5) require adequate assurance of approved water rights in accordance with rules and orders enacted under Section 40-6-5;
- (6) notify the county executive of the county in which the drilling will take place in writing of the issuance of a drilling permit;
- (7) complete the verification of natural gas to hydrogen conversion plants required by Section 59-5-303;
- (8) enter agreements and issue tax credit certificates in accordance with Section 40-6-24; and
- (9) through the division's director, implement Title 19, Chapter 12, Pollution Control Act.

Amended by Chapter 159, 2025 General Session

**40-6-17 Cooperative research and development projects.**

The board and the Division of Oil, Gas, and Mining are authorized to enter into cooperative agreements with the national, state or local governments, and with independent organizations and institutions for the purpose of carrying out research and development experiments involving energy resources to the extent that the project is funded or partially funded and approved by the Legislature.

Amended by Chapter 344, 2009 General Session

**40-6-18 Lands subject to chapter.**

This act shall apply to all lands in the State of Utah, lawfully subject to its police power, and shall apply to lands of the United States or the lands subject to the jurisdiction of the United States.

Enacted by Chapter 205, 1983 General Session

**40-6-19 Bond and Surety Forfeiture Fund -- Contents -- Use of fund money.**

- (1) There is created an administrative fund within the General Fund known as the "Bond and Surety Forfeiture Fund."
- (2) Money collected by the Division of Oil, Gas, and Mining as a result of bond or surety forfeitures shall be deposited in the fund.
- (3) Interest earned on money in the fund shall accrue to the fund.
- (4)
  - (a) Money from each forfeited bond or surety, together with interest, shall be used by the Division of Oil, Gas, and Mining to accomplish the requisite performance standards under the program to which the forfeited bond or surety corresponds.
  - (b) Any money not used for a project shall be returned to the rightful claimant.

Amended by Chapter 451, 2022 General Session

**40-6-20 Use of surface land by owner or operator.**

- (1) An owner or operator may:
  - (a) enter onto surface land under which the owner or operator holds rights to conduct oil and gas operations; and
  - (b) use the surface land:
    - (i) to the extent reasonably necessary to conduct oil and gas operations; and



- (ii) consistent with allowing the surface land owner the greatest possible use of the surface land owner's property, to the extent that the surface land owner's use does not interfere with the owner's or operator's oil and gas operations.
- (2) Subject to Subsection (3), except as is reasonably necessary to conduct oil and gas operations, an owner or operator shall:
  - (a) mitigate the effects of accessing the surface land owner's surface land;
  - (b) minimize interference with the surface land owner's use of the surface land owner's property; and
  - (c) compensate a surface land owner for unreasonable:
    - (i) loss of a surface land owner's crops on the surface land;
    - (ii) loss of value to existing improvements owned by a surface land owner on the surface land; and
    - (iii) permanent damage to the surface land.
- (3) An owner or operator is not required to:
  - (a) obtain location or spacing exceptions from the division or board; or
  - (b) utilize directional or horizontal drilling techniques that are not:
    - (i) technologically feasible;
    - (ii) economically practicable; or
    - (iii) reasonably available.
- (4) The requirements of Subsection (2) do not apply to the extent that they conflict with or impair a contractual provision relevant to an owner's or operator's use of surface land for oil and gas operations.
- (5)
  - (a) The provisions of this section do not prevent:
    - (i) a person from seeking a remedy allowed by law; or
    - (ii) an owner or operator and a surface land owner from addressing the use of surface land for oil and gas operations through:
      - (A) a lease;
      - (B) a surface use agreement; or
      - (C) another written contract.
  - (b) An agreement described in Subsection (5)(a)(ii) shall control:
    - (i) the use of surface land for oil and gas operations; and
    - (ii) compensation for damage to the surface land caused by oil and gas operations.

Enacted by Chapter 342, 2012 General Session

**40-6-20.5 Title to pore space.**

- (1) Title to pore space underlying the surface estate is vested in the owner of the surface estate.
- (2) Nothing in this section shall be interpreted to increase or diminish any property right established under the laws of the state.

Enacted by Chapter 62, 2022 General Session

**40-6-21 Mediation.**

- (1) A surface land owner and an owner or operator may request non-binding mediation by providing written notice to the other party, if:
  - (a) they are unable to agree on the amount of damages for unreasonable:
    - (i) crop loss on the surface land;

- (ii) loss of value to existing improvements owned by the surface land owner on the surface land;  
or
  - (iii) permanent damage to the surface land; and
- (b) the dispute over damages described in Subsection (1)(a) relates to an application for a permit to drill submitted by the owner or operator to the division on or after July 1, 2012.
- (2) The division and the Utah Department of Agriculture and Food shall agree on, and maintain a list of, mediators qualified to mediate disputes between an owner or operator and a surface land owner.
- (3) An owner or operator and a surface land owner may mutually select a mediator from:
  - (a) the list maintained under Subsection (2); or
  - (b) any other source.
- (4) The surface land owner and the owner or operator shall equally share the cost of the mediator's services.
- (5) The provisions of this section do not prevent or delay an owner or operator from conducting oil and gas operations in accordance with applicable law.

Enacted by Chapter 342, 2012 General Session

**40-6-23 Division of Oil, Gas, and Mining Restricted Account.**

- (1) As used in this section:
  - (a) "Account" means the Division of Oil, Gas, and Mining Restricted Account created by this section.
  - (b) "Division" means the Division of Oil, Gas, and Mining.
- (2)
  - (a) There is created a restricted account within the General Fund known as the "Division of Oil, Gas, and Mining Restricted Account."
  - (b) The account consists of:
    - (i) deposits to the account made under Section 51-9-306;
    - (ii) appropriations of the Legislature; and
    - (iii) interest and other earnings described in Subsection (2)(c).
  - (c) The Office of the Treasurer shall deposit interest and other earnings derived from investment of money in the account into the account.
- (3)
  - (a) Upon appropriation by the Legislature, the division shall use money from the account to pay the costs of programs or projects administered by the division.
  - (b) An appropriation provided for under this section is not intended to replace the following that is otherwise allocated for the programs or projects described in Subsection (3)(a):
    - (i) federal money; or
    - (ii) a dedicated credit.
- (4) Appropriations made in accordance with this section are nonlapsing in accordance with Section 63J-1-602.1.

Enacted by Chapter 401, 2021 General Session

**40-6-24 Tax credit for mining exploration -- Division to issue certificates.**

- (1) As used in this section:
  - (a) "Activity" means:
    - (i) surveying by a geophysical method or by a geochemical method;

- (ii) drilling one or more exploration holes;
  - (iii) conducting underground exploration;
  - (iv) surface trenching or bulk sampling;
  - (v) taking aerial photographs;
  - (vi) geological and geophysical logging;
  - (vii) sample analysis; or
  - (viii) metallurgical testing.
- (b) "Assigned tax credit certificate" means a tax credit certificate the division issues to a person to which a claimant assigns the claimant's tax credit.
- (c)
- (i) "Certified expenditure" means a cost incurred for an activity in direct support of an eligible exploration activity conducted at a specific site.
  - (ii) "Certified expenditure" includes:
    - (A) the cost of obtaining an approval, a permit, a license, or a certificate for an eligible exploration activity;
    - (B) a direct labor cost and the cost of benefits for employees directly associated with work described in Subsection (1)(c)(i);
    - (C) the cost of leasing equipment from a third party;
    - (D) the cost of owning, maintaining, or operating equipment;
    - (E) insurance and bond premiums associated with the activities described in Subsections (1)(c)(ii)(A) through (D);
    - (F) the cost of a consultant or an independent contractor; and
    - (G) any general expense related to operating the business engaged in the eligible exploration activity to the extent the expense is directly attributable to the work described in Subsection (1)(c)(i).
  - (iii) "Certified expenditure" does not include:
    - (A) return on investment; or
    - (B) insurance or bond premiums not described in Subsection (1)(c)(ii)(E).
- (d)
- (i) "Claimant" means a person that:
    - (A) is engaged in the business of mining or extracting minerals;
    - (B) is subject to a severance tax, for the taxable year in which the person applies for a tax credit certificate, under Title 59, Chapter 5, Part 2, Mining Severance Tax, as a direct result of minerals produced from eligible exploration activities; and
    - (C) makes a certified expenditure.
  - (ii) "Claimant" does not include a person in the business of mining or extracting minerals on the Great Salt Lake from:
    - (A) the brines of the Great Salt Lake, except for a person using a nonevaporative mining or extraction method; or
    - (B) a material or secondary source, including tails, slag, waste dumps, or another similar secondary source, derived from the brines of the Great Salt Lake.
- (e) "Eligible claimant" means a claimant or a person to which a claimant assigns a tax credit in accordance with Subsections (4)(a)(vi) and (7).
- (f) "Eligible exploration activity" means an activity performed in the state that is associated with:
- (i) producing a mineral from a natural deposit that is not part of a mine that exists at the time the activity begins;
  - (ii) producing a mineral not under production within a mine that exists at the time the activity begins;

- (iii) recovering a mineral not under production from a secondary source at the time the activity begins, including tails, slag, waste dumps, or another similar secondary source, whether in solution or otherwise;
- (iv) expanding production of a mineral using a mining method not used within a mine that exists at the time the activity begins; or
- (v) expanding existing production of a mineral that requires a new exploration or mining permit or the modification of a permit issued before the activity begins.
- (g) "Geochemical method" means a method of gathering geochemical data, including collecting soil, rock, water, air, vegetation, or any other similar item and performing a chemical analysis on the item.
- (h) "Geophysical method" means a method of gathering geophysical data that is used in mineral exploration, including seismic, gravity, magnetic, radiometric, radar, electromagnetic, and other remote sensing measurements.
- (i) "Mine" means the same as that term is defined in Section 59-5-201.
- (j) "Mineral" means:
  - (i) a metalliferous mineral as defined in Section 59-5-201; or
  - (ii) a metalliferous compound as defined in Section 59-5-202.
- (k) "Tax credit certificate" means a certificate the division issues that:
  - (i) lists the claimant's name and taxpayer identification number;
  - (ii) lists the amount of the claimant's tax credit authorized under this section for a taxable year; and
  - (iii) includes other information as determined by the division.
- (2) Before claiming a tax credit under Section 59-5-304, a person shall apply to the division to enter an agreement and, upon becoming an eligible claimant, to receive a tax credit certificate.
- (3)
  - (a) Except as provided in Subsection (3)(b), a person shall enter an agreement with the division before beginning eligible exploration activities.
  - (b) A person that has certified expenditures from an eligible exploration activity for a taxable year beginning on or after January 1, 2025, and beginning before January 1, 2026, shall enter an agreement with the division as provided by rule.
- (4)
  - (a) The agreement shall provide:
    - (i) the eligible exploration activities for which the person may incur certified expenditures eligible to receive a tax credit certificate, which may include certified expenditures from a taxable year beginning on or after January 1, 2025, and beginning before January 1, 2027;
    - (ii) the type of mineral the person intends to produce;
    - (iii) the maximum number of years a person has between the beginning of eligible exploration activities and the production of minerals as a direct result of the eligible exploration activities;
    - (iv) the maximum number of years, which may not exceed 20 years, that a person may receive a tax credit certificate;
    - (v) the requirements for reporting certified expenditures and production of minerals as a direct result of eligible exploration activity, including:
      - (A) a description of the mine where the eligible exploration activity occurred;
      - (B) evidence that the certified expenditure occurred and the amount of the certified expenditure; and
      - (C) the means for verifying that severance tax liability occurs as a direct result of an eligible exploration activity; and

- (vi) a requirement that, if a claimant intends to assign a tax credit, the claimant shall provide to the division a written notice of intent to assign the tax credit to another person, in a form the division approves, that includes:
  - (A) written certification or other proof that the claimant irrevocably elects not to claim the tax credit authorized by the tax credit certificate; and
  - (B) contact information for the person to which the claimant is assigning the tax credit.
- (b) The parties to the agreement may modify the terms of the agreement.
- (c)
  - (i) The division shall approve certified expenditures upon receiving a report of a certified expenditure unless the division determines that the expenditure does not meet the definition of certified expenditure.
  - (ii) If the division determines that an expenditure does not meet the definition of certified expenditure, the division shall provide the person a written explanation that states each reason the division denied the expenditure and give the person an opportunity to correct any deficiency or provide additional information.
- (5)
  - (a) A person with an agreement may apply for a tax credit certificate:
    - (i) upon becoming an eligible claimant; and
    - (ii) for a taxable year beginning on or after January 1, 2027.
  - (b) The person shall include in the application for a tax credit certificate the following information for the taxable year in which the person seeks a tax credit certificate:
    - (i) proof that the person is an eligible claimant;
    - (ii) a description of the mineral that the eligible claimant produced and evidence to support that the mineral is produced from an eligible exploration activity;
    - (iii) the amount of severance tax liability as a direct result of minerals produced from an eligible exploration activity that the eligible claimant incurred for the taxable year; and
    - (iv) any other information the division requests.
- (6)
  - (a) After the division receives an application for a tax credit certificate, the division shall:
    - (i) verify that the person is an eligible claimant; and
    - (ii) determine whether the eligible claimant has approved certified expenditures.
  - (b) Subject to Subsection (6)(c), the division shall issue a tax credit certificate in an amount equal to the lesser of:
    - (i) the amount of certified expenditures minus any certified expenditures for which the division previously issued a tax credit certificate; or
    - (ii) the claimant's severance tax liability as a direct result of minerals produced from an eligible exploration activity for the taxable year.
  - (c)
    - (i) The division may not issue a tax credit certificate if the aggregate value of tax credit certificates issued for certified expenditures related to eligible exploration activities at the same mine exceeds \$20,000,000.
    - (ii) Notwithstanding Subsection (6)(c)(i), the division may issue a tax credit certificate up to an aggregate value of \$30,000,000 for certified expenditures related to eligible exploration activities at the same mine if the certified expenditures that exceed \$20,000,000 are for eligible exploration activities undertaken to produce a mineral for which the United States is greater than 50% net import reliant, as provided in the Mineral Commodity Summaries published by the United States Geological Survey, in the calendar year in which an eligible exploration activity commences.

- (7)
- (a) If the claimant meets the requirements of Subsection (4)(a)(vi), the division shall issue an assigned tax credit certificate to the person identified by the claimant in an amount equal to the lesser of:
    - (i) the amount of the claimant's certified expenditures minus any certified expenditures for which the division previously issued a tax credit certificate; or
    - (ii) the person's severance tax liability as a direct result of minerals produced from an eligible exploration activity for the taxable year.
  - (b) A person that receives an assigned tax credit certificate may claim the tax credit under Section 59-5-304 as if the person met the requirements of Section 59-5-304, if the person files a return under Title 59, Chapter 5, Part 2, Mining Severance Tax.
- (8) An eligible claimant that receives a tax credit certificate or assigned tax credit certificate in accordance with this section shall retain the tax credit certificate or assigned tax credit certificate for the same time period that a person is required to keep books and records under Section 59-1-1406.
- (9) The division shall submit annually to the State Tax Commission an electronic list that includes:
- (a) the name and identifying information for:
    - (i) each claimant to which the division issues a tax credit certificate; and
    - (ii) each person to which the division issues an assigned tax credit certificate in accordance with Subsection (7);
  - (b) for each person described in Subsection (9)(a), the amount of tax credit stated on the tax credit certificate or assigned tax credit certificate; and
  - (c) for each person described in Subsection (9)(a)(ii), information necessary to identify the original tax credit certificate and the assigned tax credit certificate.
- (10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules governing the administration of the agreement and tax credit certificate process described in this section.

Repealed and Re-enacted by Chapter 159, 2025 General Session