

CHAPTER [45-9](#)
OIL AND GAS CONSERVATION

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45-9-1. Purpose of chapter--Development of oil and gas resources.

It is hereby declared that it is in the public interest to foster, to encourage, and to promote the development, production, and utilization of natural resources of oil and gas in the State of South Dakota 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 be had and that the correlative rights of all owners be fully protected; and to encourage, to authorize, and to provide for cycling, recycling, pressure maintenance, and secondary recovery operations in order that the greatest possible economic recovery of oil and gas be obtained within the state to the end that the landowners, the royalty owners, the producers, and the general public realize and enjoy the greatest possible good from these vital natural resources.

Source: SL 1961, ch 211, § 1.

45-9-1.1. Functions of environment and natural resources board transferred to Board of Minerals and Environment.

The functions of the environment and natural resources board pursuant to this chapter, relating to oil and gas conservation, are transferred to the Board of Minerals and Environment.

Source: SL 1981, ch 374, § 23.

45-9-2. Definition of terms.

Terms used in this chapter mean:

- (1) "Board," the Board of Minerals and Environment;
- (2) "Condensate," liquid hydrocarbons that were originally in the gaseous phase in the reservoir;
- (3) "Developed area," a spacing unit on which a well has been completed that is capable of producing oil or gas, or the acreage that is otherwise attributed to a well by the board for allowable purposes;
- (4) "Field," the general area underlaid by one or more pools;
- (5) "Gas," all natural gas and all other fluid hydrocarbons not defined in subdivision (7) as oil, including condensate because it originally was in the gaseous phase in the reservoir;
- (6) "Just and equitable share of the production," as to each person, that part of the authorized production from the pool that is substantially in the proportion that the amount of recoverable oil or gas or both in the developed area of the person's tract or tracts in the pool bears to the recoverable oil or gas or both in the total of the developed areas of the pool;
- (7) "Oil," crude petroleum oil and other hydrocarbons regardless of gravity that are produced at the wellhead in liquid form, but not liquid hydrocarbons that were originally in a gaseous phase in the reservoir;
- (8) "Owner," the person who has the right to drill into and produce from a pool and to appropriate the oil or gas the person produces from the pool;
- (9) "Person," any natural person, corporation, limited liability company, association, partnership, receiver, trustee, personal representative, guardian, fiduciary, or other representative of any kind, including any department, agency, or instrumentality of the state or of any governmental subdivision of the state;
- (10) "Pool," an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure that is completely separated from any other zone in the same structure is a pool;
- (11) "Premises," the surface property of the landowner or lessee, both real and personal, and the ingress to and the egress from the real property;
- (12) "Producer," the owner of a well or wells capable of producing oil or gas or both;
- (13) "Product," any commodity made from oil or gas, including refined crude oil, crude tops, topped crude, processed crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, gas oil, residuum, casinghead gasoline, natural gas, gasoline, kerosene, benzene, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or by-products derived from oil or gas, and blends or mixtures of two or more liquid products or by-products derived from oil or gas;
- (14) "Protect correlative rights," the action or regulation by the board affords a reasonable opportunity to each person so entitled to recover or receive the oil or gas in the person's tract or tracts or the equivalent, without being required to drill unnecessary wells or to incur other unnecessary expense to recover or receive such oil or gas or its equivalent;

(15) "Waste,":

- (a) Physical waste, as that term is generally understood in the oil and gas industry;
- (b) The inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy;
- (c) The inefficient storing of oil or gas;
- (d) The drilling of unnecessary wells;
- (e) The locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that causes, or tends to cause, reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas;
- (f) The underground or above ground waste in the production or storage of oil or gas, however caused, and whether or not defined in other subdivisions of this section.

Source: SL 1943, ch 153, § 4; SL 1951, ch 221, § 1; SDC Supp 1960, § 42.0704; SL 1961, ch 211, § 1; SL 1983, ch 13, § 25; SL 1994, ch 351, § 110; SL 1995, ch 167, § 188.

45-9-3. Waste of oil and gas prohibited--Production of gas in conjunction with water excluded from coverage of chapter.

The waste of oil and gas is prohibited. However, the production of gas for personal use in conjunction with the production of water insofar as such gas comes from the water-bearing formations is expressly excluded from the coverage of this chapter.

Source: SL 1929, ch 202, § 1; SDC 1939, § 42.0601; SL 1943, ch 153, § 5; SDC Supp 1960, § 42.0705; SL 1961, ch 211, § 1; SL 2007, ch 255, § 1.

45-9-4. Application to drill oil or gas well--Permit--Rules and regulations of board--Fee, disposition--Agreement with surface owner.

Without limiting its general authority, the Board of Minerals and Environment, by rules promulgated pursuant to chapter [1-26](#), may require or may delegate to the secretary, specific authority to require that an operator drilling a well for oil or gas shall first file an application to drill with the secretary and obtain a permit from the secretary before drilling. The operator shall pay a fee of one hundred dollars which shall be placed in the environment and natural resources fee fund established pursuant to § [1-41-23](#). In addition, the board shall require the applicant to certify that an agreement with the landowner or lessee is being negotiated regarding compensation for damages to livestock and surface land resulting from drilling operations.

Source: SDC Supp 1960, § 42.0707 as enacted by SL 1961, ch 211, § 1; SL 1965, ch 175; SL 1974, ch 284, § 1; SL 1979, ch 296, § 5; SL 1982, ch 308, § 1; SL 1983, ch 312; SL 1994, ch 23, § 9; SL 2021, ch 1 (Ex. Ord. 21-3), § 14, eff. Apr. 19, 2021.

45-9-5. Identification of ownership of facilities for producing oil or gas.

Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of agriculture and natural resources, specific authority to require identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil and gas.

Source: SL 1943, ch 153, § 6; SDC Supp 1960, § 42.0706 (3) (i); SDC Supp 1960, § 42.0706 (4) (a) (1) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 224; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-9-6. Testing of oil and gas wells.

Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of agriculture and natural resources, specific authority to require the taking of tests of oil or gas wells.

Source: SDC Supp 1960, § 42.0706 (4) (a) (4) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 225; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-9-7. Separation of production from wells--Gaseous and liquid hydrocarbons--Measurement.

The Board of Minerals and Environment may require, or may delegate to the secretary, specific authority to require that the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured by such means and upon such standards as may be prescribed by the board in rules promulgated pursuant to chapter [1-26](#).

Source: SDC Supp 1960, § 42.0706 (4) (a) (6) as enacted by SL 1961, ch 211, § 1; SL 1993, ch 256, § 45.

45-9-8. Classification of wells.

Without limiting its general authority, the Board of Minerals and Environment may classify, or may delegate to the secretary of agriculture and natural resources, specific authority to classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

Source: SDC Supp 1960, § 42.0706 (4) (d) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 226; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-9-9. Metering or measuring of oil, gas, or product.

Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of agriculture and natural resources, specific authority to require metering or other measuring of oil, gas, or product.

Source: SDC Supp 1960, § 42.0706 (4) (a) (8) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 227; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-9-10. Operation of wells with inefficient gas-oil or water-oil ratios.

Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of agriculture and natural resources, specific authority to require that wells not be operated with inefficient gas-oil or water-oil ratios, and to fix their ratios, and to limit production from wells with inefficient gas-oil or water-oil ratios.

Source: SL 1943, ch 153, § 6; SDC Supp 1960, § 42.0706 (3) (f); SDC Supp 1960, § 42.0706 (4) (a) (7) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 228; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-9-11. Operations for production of oil or gas, regulation by board.

The Board of Minerals and Environment shall promulgate rules pursuant to chapter [1-26](#) to regulate or to provide for:

- (1) The drilling, producing, and plugging of wells, and all other operations for the production of oil or gas;
- (2) The shooting and chemical or physical treatment of wells;

- (3) The spacing or locating of wells;
- (4) Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; and
- (5) Disposal of salt water and oil field wastes.

The board may delegate to the secretary of agriculture and natural resources the authority to monitor and enforce compliance with rules promulgated pursuant to this section.

Source: SL 1925, ch 250, § 2; SDC 1939, § 42.0603; SL 1943, ch 153, § 6; SDC Supp 1960, § 42.0706 (3); SDC Supp 1960, § 42.0706 (4) (b) as enacted by SL 1961, ch 211, § 1; SL 1993, ch 256, § 46; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-9-12. Production of oil and gas from field, pool, or area where physical waste created.

Without limiting its general authority, the Board of Minerals and Environment may regulate, or may delegate to the secretary of agriculture and natural resources, specific authority to regulate the production of oil and gas from any field, pool, or area, where physical waste is created.

Source: SDC Supp 1960, § 42.0706 (4) (c) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 229; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-9-13. Administration of chapter by board--Rules and orders to prevent waste, protect correlative rights and govern procedure before board.

The Board of Minerals and Environment shall promulgate rules pursuant to chapter [1-26](#) and issue orders reasonably necessary to prevent waste, to protect correlative rights, to govern the practice or procedure before the board, and otherwise to administer this chapter. The board may delegate to the secretary of agriculture and natural resources the authority to enforce any rules or orders promulgated or issued pursuant to this section.

Source: SL 1943, ch 153, § 6; SDC Supp 1960, § 42.0706 (3); SDC Supp 1960, § 42.0706 (4) (e) as enacted by SL 1961, ch 211, § 1; SL 1993, ch 256, § 47; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-9-14. Prevention of oil or gas escape, intrusion of water, pollution of fresh-water supplies, and blowouts, cavings, seepages, and fires.

Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of agriculture and natural resources, specific authority to require the drilling, casing, operation, and plugging of wells in such manner as to prevent:

- (1) Reasonably preventable escape of oil or gas out of one pool into another;
- (2) The detrimental intrusion of water into an oil or gas pool that is avoidable by efficient operations;
- (3) The pollution of fresh-water supplies by oil, gas, or salt water; and
- (4) Blow-outs, cavings, seepages, and fires.

Source: SL 1925, ch 250, § 2; SDC 1939, § 42.0603; SL 1943, ch 153, § 6; SDC Supp 1960, § 42.0706 (3); SDC Supp 1960, § 42.0706 (4) (a) (3) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 230; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-9-15. Plugging and performance bond for wells--Amount--Conditions.

Without limiting its general authority, the board may require, or may delegate to the secretary of agriculture and natural resources specific authority to require, the furnishing of a plugging and performance bond in the amount of fifty thousand dollars or an amount sufficient to guarantee the costs of well site reclamation, or one hundred thousand dollars blanket, with good and sufficient surety, conditioned for the

performance of the duty to plug each dry or abandoned well, to restore the premises, insofar as possible, to the condition that existed before the filing of the application to drill; and conditioned on the proper performance of all of the requirements of §§ [45-9-5](#) to [45-9-18](#), inclusive. The condition of the bond relating to restoration of the surface is met if the landowner or lessee and the producer or driller adopt a different plan approved by the board. The board may require additional bond if the circumstances require.

Source: SL 1943, ch 153, § 6; SL 1959, ch 244; SDC Supp 1960, § 42.0706 (3) (a); SDC Supp 1960, § 42.0706 (4) (a) (5) as enacted by SL 1961, ch 211, § 1; SL 1979, ch 296, § 1; SL 2011, ch 165, § 231; SL 2013, ch 227, § 1; SL 2020, ch 193, § 1; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-9-15.1. Repealed by SL 2013, ch 227, § 2.

[45-9-15.2.](#) Application date of bond requirements.

The bond requirements in § [45-9-15](#) do not apply to any wells permitted or drilled prior to July 1, 2013, unless the well is sold or transferred after July 1, 2013.

Source: SL 2013, ch 227, § 3.

[45-9-15.3.](#) Supplemental plugging and performance bond--Idle wells--Amount.

Without limiting its general authority, the board may require, or may delegate to the secretary of agriculture and natural resources specific authority to require, the furnishing of a supplemental plugging and performance bond in the amount of twenty thousand dollars or an amount sufficient to guarantee the costs of well site reclamation for any oil and gas well that does not produce or otherwise remains unused for more than six months.

Source: SL 2020, ch 193, § 2; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

[45-9-16.](#) Recordkeeping by producers, handlers, and processors of the quantities of oil or gas--Examination.

Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of agriculture and natural resources, specific authority to require that every person who produces, sells, purchases, acquires, stores, transports, refines, or processes oil or gas in this state keep and maintain complete and accurate records of the quantities of the oil or gas. The records shall be available for examination by the board or its agents upon request.

Source: SDC Supp 1960, § 42.0706 (4) (a) (9) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 233; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

[45-9-17.](#) Reports or plats--Filing with board.

Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of agriculture and natural resources, specific authority to require the filing with the board of reports or plats that it may prescribe.

Source: SDC Supp 1960, § 42.0706 (4) (a) (10) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 234; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

[45-9-18. Mechanical well logs, surveys and reports on well location, drilling, and production--Samples, core chips, and complete cores--Filing--Exploratory wells.](#)

Without limiting its general authority, the Board of Minerals and Environment may require, or may delegate to the secretary of agriculture and natural resources, specific authority to require the filing of all mechanical well logs, directional surveys, and reports on well location, drilling, and production with the secretary within thirty days after the completion or abandonment of the well. The board may also require the filing free of charge of samples and core chips and of complete cores, if taken, and if requested, with the secretary within six months after the completion or abandonment of the well. However, the log and samples and cores of an exploratory or wildcat well may, upon written request by the operator, be held confidential until six months after the completion of the well.

Source: SL 1925, ch 250, § 2; SDC 1939, § 42.0603; SL 1943, ch 153, § 6; SDC Supp 1960, § 42.0706 (3); SDC Supp 1960, § 42.0706 (4) (a) (2) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 235; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

[45-9-19. False representations as perjury--Drilling without permit as misdemeanor.](#)

Any person:

- (1) Who intentionally falsely swears or affirms to a matter when an oath or affirmation is required by this chapter or by a rule or order of the Department of Water and Natural Resources authorized by this chapter;
- (2) Who, for the purpose of evading a rule or order authorized by this chapter, intentionally makes or causes to be made a false entry or statement of fact in a report required to be made by this chapter, or by a rule or order authorized by this chapter; or
- (3) Who makes or causes to be made a false entry in an account, record, or memorandum required to be kept by this chapter or a rule or order authorized by this chapter;

is guilty of perjury.

Any person who commences an operation for the drilling of a well for oil or gas without filing with the Department of Agriculture and Natural Resources an application to drill, and without obtaining a permit from the department to drill, is guilty of a Class 1 misdemeanor.

Source: SL 1943, ch 153, § 14; SDC Supp 1960, § 42.9908; SL 1961, ch 211, § 2; SL 1983, ch 15, § 23; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

[45-9-20. Spacing units for a pool--Purposes--Establishment by board--Exception.](#)

When necessary to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the Board of Minerals and Environment shall establish spacing units for a pool, except in those pools which, prior to July 1, 1961, have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing state of development.

Source: SL 1953, ch 220, § 1; SDC Supp 1960, § 42.0706 (3) (o); SDC Supp 1960, § 42.0708 (1) as enacted by SL 1961, ch 211, § 1.

[45-9-21. Spacing units for a pool--Size and shape, establishment by board, modifications and exceptions.](#)

Except where circumstances reasonably require, spacing units shall be of approximately uniform size and shape for the entire pool. The Board of Minerals and Environment may establish spacing units of different sizes

or shapes for different parts of a pool or may grant exceptions to the size or shape of any spacing unit or units or may change the size or shape of one or more existing spacing units.

Source: SL 1953, ch 220, § 1; SDC Supp 1960, § 42.0706 (3) (o); SDC Supp 1960, § 42.0708 (3) as enacted by SL 1961, ch 211, § 1.

45-9-22. Spacing units to be sized and shaped for efficient development of pool--Minimum size.

An order establishing spacing units shall specify the size and shape of the units, which will in the opinion of the Board of Minerals and Environment result in the efficient and economical development of the pool as a whole. The size of the spacing units may not be smaller than the maximum area that can be efficiently and economically drained by one well.

Source: SL 1953, ch 220, § 1; SDC Supp 1960, § 42.0706 (3) (o) (1); SDC Supp 1960, § 42.0708 (2) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 236.

45-9-23. Spacing units for a pool--Production limited by waste--Order of board establishing, contents.

When production is limited due to physical waste, the Board of Minerals and Environment shall include in the order establishing spacing units suitable provisions to prevent the production from the spacing unit of more than its just and equitable share of the oil and gas in the pool.

Source: SDC Supp 1960, § 42.0708 (4) as enacted by SL 1961, ch 211, § 1.

45-9-24. Spacing units of different sizes or shapes--Adjustment of allowable production.

If spacing units of different sizes or shapes exist in a pool, the Board of Minerals and Environment shall, if necessary, and if production is limited due to physical waste, adjust the allowable production from any wells drilled in the pool so that each person entitled to a share of the production in each spacing unit has a reasonable opportunity to produce or receive his or her just and equitable share of the production.

Source: SDC Supp 1960, § 42.0708 (3) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 237.

45-9-25. Hearing to establish spacing units--Establishment of temporary spacing units by board pending determination of ultimate spacing period.

If, at the time of a hearing to establish spacing units there is not sufficient evidence from which to determine the area that can be efficiently and economically drained by one well, the Board of Minerals and Environment may make an order establishing temporary spacing units for the orderly development of the pool pending the obtaining of the information required to determine what the ultimate spacing should be.

Source: SDC Supp 1960, § 42.0708 (2) as enacted by SL 1961, ch 211, § 1.

45-9-26. Order establishing spacing units for a pool--Size and shape of each unit--Location of permitted well--Exception for wells drilled or drilling at time of application.

An order establishing spacing units for a pool shall specify the size and shape of each unit and the location of the permitted well thereon in accordance with a reasonable uniform spacing plan, with necessary exceptions for wells drilled or drilling at the time of the filing of the application.

Source: SL 1953, ch 220, § 1; SDC Supp 1960, § 42.0706 (3) (o) (1); SDC Supp 1960, § 42.0708 (4) as enacted by SL 1961, ch 211, § 1.

45-9-27. Drilling of well at other than prescribed location when authorized by secretary.

Upon application, if the secretary of agriculture and natural resources finds that a well drilled at the prescribed location would not be likely to produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such wells or for other good cause shown, the secretary may permit the well to be drilled at a location other than that prescribed by the spacing order.

Source: SL 1953, ch 220, § 1; SDC Supp 1960, § 42.0706 (3) (o) (2); SDC Supp 1960, § 42.0708 (4) as enacted by SL 1961, ch 211, § 1; SL 1974, ch 284, § 2; SL 2011, ch 165, § 238; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-9-28. Scope of order establishing spacing units for a pool--Modification--Inclusion of additional area--Exclusion of land not underlaid by pool.

An order establishing spacing units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the Board of Minerals and Environment from time to time to include additional areas determined to be underlaid by such pool, or to exclude lands determined not to be underlaid by such pool.

Source: SL 1953, ch 220, § 1; SDC Supp 1960, § 42.0706 (3) (o) (3); SDC Supp 1960, § 42.0708 (5) as enacted by SL 1961, ch 211, § 1.

45-9-29. Order establishing spacing units--Modification to prevent waste, avoidance of unnecessary wells, or to protect correlative rights.

When found necessary for the preventing of waste or to avoid the drilling of unnecessary wells, or to protect correlative rights, an order establishing spacing units in a pool may be modified by the Board of Minerals and Environment to increase the size of spacing units in the pools or any zone thereof, or to permit the drilling of additional wells on a reasonably uniform pattern in the pool.

Source: SDC Supp 1960, § 42.0708 (5) as enacted by SL 1961, ch 211, § 1.

45-9-30. Two or more separately owned tracts or interests embraced within spacing unit--Pooling of interests.

When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the owners and royalty owners thereof may pool their interests for the development and operation of the spacing unit.

Source: SL 1953, ch 220, § 1; SDC Supp 1960, § 42.0706 (3) (o) (5); SDC Supp 1960, § 42.0709 (1) as enacted by SL 1961, ch 211, § 1.

45-9-31. Order pooling all interests in spacing unit--Application by interested person--Notice and hearing--Terms and conditions.

In the absence of voluntary pooling, the Board of Minerals and Environment or the secretary, as applicable, upon the application of any interested person, shall enter an order pooling all interests in the spacing unit for the development and operation of the spacing unit, and for the sharing of production from the spacing

unit. Each such pooling order shall be made after notice and opportunity for hearing, and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive without unnecessary expense, his or her just and equitable share.

Source: SL 1953, ch 220, § 1; SDC Supp 1960, § 42.0706 (3) (o) (5); SDC Supp 1960, § 42.0709 (1) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 239; SL 2012, ch 212, § 1.

45-9-32. Operation of well--Rights of owners to participate--Payment of expenses.

Each such pooling order shall authorize the drilling, equipping, and operation of a well on the spacing unit; shall provide who may drill and operate the well; shall prescribe the time and manner in which all the owners in the spacing unit may elect to participate in such well drilling, equipping, and operation; and shall provide for payment of the reasonable actual cost of the well drilling, equipping, and operation by all those who elect to participate, plus a reasonable charge for supervision and interest.

Source: SL 1953, ch 220, § 1; SDC Supp 1960, § 42.0706 (3) (o) (6); SDC Supp 1960, § 42.0709 (3) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 240.

45-9-33. Alternative rights of owners--Surrender of leasehold interest to participating owners--Participation on a limited basis.

If requested, each such pooling order shall provide for one or more just and equitable alternatives whereby an owner who does not elect to participate in the risk and cost of the drilling and operation of a well may elect to surrender his or her leasehold interest to the participating owners on some reasonable basis and for a reasonable consideration. If such terms are not agreed upon, they shall be determined by the Board of Minerals and Environment. The owner may elect to participate in the drilling and operation of the well, on a limited or carried basis, upon terms and conditions determined by the board to be just and reasonable.

Source: SL 1953, ch 220, § 1; SDC Supp 1960, § 42.0706 (3) (o) (6); SDC Supp 1960, § 42.0709 (3) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 241.

45-9-34. Spacing unit covered by pooling order--Definition of terms--Operations incident to the drilling of a well--Portion of production allocated to each tract.

Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

Source: SL 1953, ch 220, § 1; SDC Supp 1960, § 42.0706 (3) (o) (5); SDC Supp 1960, § 42.0709 (2) as enacted by SL 1961, ch 211, § 1.

45-9-35. Rights of owners operating well or paying costs for benefit of another under pooling order--Share of production--Determination of costs by board.

If any of the owners drills, equips, and operates, or pays the costs of drilling, equipping, and operating a well for the benefit of another person as provided for in an order of pooling, then the owner is entitled to the share of production from the spacing unit accruing to the interest of the other person, exclusive of a royalty not to exceed one-eighth of the production, until the market value of the other person's share of the production exclusive of the royalty, equals the sums payable by or charged to the interest of the other person. If there is a

dispute as to the costs of drilling, equipping, or operating a well, the Board of Minerals and Environment shall determine the costs.

Source: SL 1953, ch 220, § 1; SDC Supp 1960, § 42.0706 (3) (o) (5); SDC Supp 1960, § 42.0709 (3) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 242.

45-9-36. Well completed prior to pooling of interest in spacing unit--Sharing of production--Calculation of costs.

In instances where a well is completed prior to the pooling of interests in a spacing unit, the sharing of production shall be from the effective date of the pooling except that, in calculating costs, credit shall be given for the value of the owner's share of any prior production from the well.

Source: SDC Supp 1960, § 42.0709 (3) as enacted by SL 1961, ch 211, § 1.

45-9-37. Operation as unit of one or more pools--Consideration of need--Hearing.

The Board of Minerals and Environment upon its own motion or upon the application of any interested person shall provide an opportunity for a hearing to consider the need for the operation as a unit of one or more pools or parts thereof in a field.

Source: SDC Supp 1960, § 42.0710 (1) as enacted by SL 1961, ch 211, § 1; SL 2012, ch 212, § 2.

45-9-38. Findings of board requiring order for unit operation of a pool.

The Board of Minerals and Environment shall make an order providing for the unit operation of a pool or part thereof if it finds that:

- (1) Such operation is reasonably necessary to increase substantially the ultimate recovery of oil or gas; and
- (2) The value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting such operations.

Source: SDC Supp 1960, § 42.0710 (2) as enacted by SL 1961, ch 211, § 1.

45-9-39. Order of board for unit operation of a pool--Terms and conditions--Prescribing plan of operation--Essential elements of plan.

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

- (1) A description of the pool or pools or parts thereof to be so operated, termed the unit area;
- (2) A statement of the nature of the operations contemplated;
- (3) An allocation to the separately owned tracts in the unit area of 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 of Minerals and Environment 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 values of each tract so determined bears to the relative value of all tracts in the unit area;
- (4) A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributions to the unit operations;

- (5) A provision providing how the costs of unit operations, including capital investments, shall be determined and charged to the separately owned tracts and how said costs shall be paid, including a provision when, how, and by whom the unit production allocated to an owner who does not pay the share of the cost of unit operations charged to such owner, or the interest of such owner, may be sold and the proceeds applied to the payment of such costs;
- (6) A provision, if necessary, for carrying or otherwise financing any person who elects to be carried or otherwise financed, allowing a reasonable interest charge for such service payable out of such person's share of the production;
- (7) A provision for the supervision and conduct of the unit operations in respect to which each person shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of such person;
- (8) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate; and
- (9) Such additional provisions that are found to be appropriate for carrying on the unit operations, and for the protection of correlative rights.

Source: SDC Supp 1960, § 42.0710 (3) as enacted by SL 1961, ch 211, § 1.

45-9-40. Order of board for unit operation of a pool--Not effective until approved by persons responsible for operating costs.

No order of the Board of Minerals and Environment providing for unit operations becomes effective unless and until the plan for unit operations prescribed by the board has been approved in writing by those persons who, under the board's order, shall be required to pay at least sixty percent of the cost of the unit operation, and also by the owners of at least sixty percent of the production or proceeds thereof that will be credited to interests which are free of cost, such as 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 operation has been so approved.

Source: SDC Supp 1960, § 42.0710 (4) as enacted by SL 1961, ch 211, § 1; SL 2004, ch 273, § 1.

45-9-41. Supplemental hearing on approval of plan for unit operation.

If the plan for unit operations has not been approved as required by § [45-9-40](#) at the time the order providing for unit operations is made, the Board of Minerals and Environment shall upon application and notice provide opportunity for supplemental hearings to determine if and when the plan for unit operations has been approved.

Source: SDC Supp 1960, § 42.0710 (4) as enacted by SL 1961, ch 211, § 1; SL 2012, ch 212, § 3.

45-9-42. Order of board for unit operation of a pool--Revocation when not approved by persons owning required percentage of interest.

If the persons owning the required percentage of interest in the unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, such order shall be ineffective, and shall be revoked by the Board of Minerals and Environment unless for good cause shown the board extends such time.

Source: SDC Supp 1960, § 42.0710 (4) as enacted by SL 1961, ch 211, § 1.

45-9-43. Amendment of order for unit operations--Conditions.

An order providing for unit operations may be amended by an order made by the Board of Minerals and Environment in the same manner and subject to the same conditions as an original order providing for unit operations under the following conditions:

- (1) If such an amendment affects only the rights and interests of the owners, the approval of the amendment by the royalty owners is not required; and
- (2) No such order of amendment may change the percentage for allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all persons owning oil and gas rights in the tract, or change the percentage for the allocation of cost as established for any separately owned tract by the original order, except with the consent of all owners in the tract.

Source: SDC Supp 1960, § 42.0710 (5) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 243.

45-9-44. Order of board for unit operation of a pool embraced in unit area established by prior order--Allocation of production.

The Board of Minerals and Environment, 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 board. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated hereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the previous order.

Source: SDC Supp 1960, § 42.0710 (6) as enacted by SL 1961, ch 211, § 1.

45-9-45. Order of Board of Minerals and Environment for unit operation on less than whole of a pool--Size and shape of unit area.

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

Source: SDC Supp 1960, § 42.0710 (7) as enacted by SL 1961, ch 211, § 1.

45-9-46. Operation of well upon unit area--Unit of production allocated to separately owned tract.

All operations, including the commencement, drilling, or operation of a well upon any portion of the unit area are deemed for all purposes the conduct of such operations upon each separately owned tract in the area by the several owners of the tracts. The portion of the unit production allocated to a separately owned tract in a unit area is, when produced, deemed, for all purposes, to have been actually produced from the tract by a well drilled on the tract.

Source: SDC Supp 1960, § 42.0710 (8) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 244.

45-9-47. Order of board for unit operation--Express or implied obligations of contract covering land in unit area, fulfillment by conducting operations under order.

Operations conducted pursuant to an order of the Board of Minerals and Environment providing for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the board.

Source: SDC Supp 1960, § 42.0710 (8) as enacted by SL 1961, ch 211, § 1.

45-9-48. Order of Board of Minerals and Environment for unit operation--Ownership of portion of production allocated and proceeds of sale.

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

Source: SDC Supp 1960, § 42.0710 (9) as enacted by SL 1961, ch 211, § 1.

45-9-49. Order for unit operations does not transfer title.

Except to the extent that the parties affected agree, no order providing for unit operations may be construed to result in a transfer of any part of the title of any person to the oil and gas rights in any tract in the unit area.

Source: SDC Supp 1960, § 42.0710 (11) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 245.

45-9-50. Contract for sale or purchase of production from separately owned tract not terminated.

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

Source: SDC Supp 1960, § 42.0710 (10) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 246.

45-9-51. Rights of owners within unit area to property acquired in conduct of unit operation.

All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area, and shall be the property of such owners in the proportion that the expenses of unit operations are charged.

Source: SDC Supp 1960, § 42.0710 (11) as enacted by SL 1961, ch 211, § 1.

45-9-52. Agreement for cooperative development or operation of field or pool--Approval by board--Failure to submit for approval not evidence of antitrust law violation.

An agreement for the unit or cooperative development or operation of a field, pool, or part of the field or pool, may be submitted to the Board of Minerals and Environment for approval as being in the public interest or reasonably necessary to prevent waste or protect correlative rights. The approval constitutes a complete defense to any suit charging violation of any statute of the state relating to trusts and monopolies on account of the agreement or on account of operations conducted pursuant to the agreement. The failure to submit such an agreement to the board for approval does not for that reason imply or constitute evidence that the agreement or operations conducted pursuant to the agreement are in violation of laws relating to trusts and monopolies.

Source: SDC Supp 1960, § 42.0711 as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 247.

45-9-53. Lands to which chapter applies.

This chapter shall apply to all lands located in the state, however owned, including any lands owned or administered by any government or any agency or political subdivision thereof, excepting only such land as shall be specifically exempted by federal statute.

Source: SDC Supp 1960, § 42.0706 (1) as enacted by SL 1961, ch 211, § 1.

45-9-54. Enforcement of chapter--Jurisdiction of board.

The Board of Minerals and Environment has jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter.

Source: SL 1943, ch 153, § 6; SDC Supp 1960, § 42.0706 (1); SDC Supp 1960, § 42.0706 (2) as enacted by SL 1961, ch 211, § 1.

45-9-55. Investigations by board.

The Board of Minerals and Environment shall conduct investigations necessary to determine whether waste exists or is imminent or whether other facts exist that justify action by the board.

Source: SL 1943, ch 153, § 6; SDC Supp 1960, § 42.0706 (2); SDC Supp 1960, § 42.0706 (3) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 248.

45-9-56. Authority of board to act--Upon its own motion--Petition of interested person.

The Board of Minerals and Environment may act upon its own motion or upon the petition of any interested person.

Source: SDC Supp 1960, § 42.0712 (6) as enacted by SL 1961, ch 211, § 1.

45-9-57. Repealed by SL 2012, ch 212, § 4.

45-9-58. Notice of hearing--Service by mail or publication--Proof of service.

The notice of a hearing on any application made pursuant to this chapter shall be served either by certified mail or by publication in a newspaper of general circulation in the county where the affected land, or some part thereof, is situated. The applicant shall give notice of any hearing that may affect property interests by mailing the notice by certified mail, return receipt requested, to any person whose property may be affected by the hearing. As proof of service, the applicant shall file with the board an affidavit declaring that the notice was mailed and the certified mail return receipt. Any person who cannot be served notice by certified mail may be served notice of the hearing by publication.

Source: SDC Supp 1960, § 42.0712 (4) as enacted by SL 1961, ch 211, § 1; SL 1985, ch 343; SL 2012, ch 212, § 5.

45-9-59. Witnesses--Production of books and records.

The Board of Minerals and Environment may summon witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it.

Source: SL 1943, ch 153, § 8; SDC Supp 1960, § 42.0708 (1); SDC Supp 1960, § 42.0713 (1) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 249.

45-9-60. Noncompliance with subpoena--Refusal of witness to testify--Court order--Contempt.

If any person refuses to comply with the subpoena issued by the Board of Minerals and Environment, or if any witness refuses to testify to any matter on which the witness may be interrogated and which is pertinent to the hearing or investigation, any circuit court in the state, upon the application of the board, may in term time or vacation issue an attachment for the person and compel the person to comply with the subpoena, and to appear before the board and produce such records, books, and documents for examination, and to give testimony. The court may punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify in the case.

Source: SL 1943, ch 153, § 8; SDC Supp 1960, § 42.0708 (2); SDC Supp 1960, § 42.0713 (2) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 250.

45-9-61. Prior rules, regulations, and orders continued in force--Accrued penalties and liabilities not repealed.

All rules, regulations, or orders made pursuant to the statute in effect prior to July 1, 1961, shall, so far as consistent with this chapter, remain in full force and effect until modified, amended, or repealed by appropriate authority.

Source: SDC Supp 1960, §§ 42.0717, 42.0718 as enacted by SL 1961, ch 211, § 1; SL 1993, ch 256, § 48.

45-9-62. Repealed by SL 1993, ch 256, § 49

45-9-63. Repealed by SL 2012, ch 212, § 6.

45-9-64. Emergency order of board--Issuance without notice or hearing--Promulgation--Termination.

When an emergency requiring immediate action is found to exist the Board of Minerals and Environment is authorized to issue an emergency order without notice or hearing, which shall be effective upon promulgation. No emergency order shall remain effective for more than fifteen days.

Source: SL 1943, ch 153, § 7; SDC Supp 1960, § 42.0707 (3); SDC Supp 1960, § 42.0712 (3) as enacted by SL 1961, ch 211, § 1.

45-9-65, 45-9-66. Repealed by SL 1993, ch 256, §§ 51, 52

45-9-67. Appeal from rule, regulation, or order of board--Persons adversely affected--Procedure.

Any person adversely affected by any rule, regulation, or order of the Board of Minerals and Environment issued in pursuance to this chapter, may appeal therefrom by following the procedure set forth in chapter [1-26](#).

Source: SL 1943, ch 153, §§ 9, 12; SDC Supp 1960, §§ 42.0709, 42.0712; SDC Supp 1960, § 42.0716 as enacted by SL 1961, ch 211, § 1.

[45-9-68](#). Violation of law, rule, regulation, or order--Civil penalty--Liability for damages to environment.

Any person who violates any provision of this chapter, or any rule, regulation, or order of the Board of Minerals and Environment is subject to a civil penalty of not more than five hundred dollars for each act of violation and for each day that such violation continues, or is liable for damages to the environment of this state, or both.

Source: SDC Supp 1960, § 42.0714 (1) as enacted by SL 1961, ch 211, § 1; SL 1988, ch 291, § 24.

[45-9-69](#). Action by attorney general to recover civil penalties--Venue.

The penalties provided in § [45-9-68](#) shall be recoverable by suit filed by the attorney general in the name and on behalf of the State of South Dakota in the circuit court for the county in which the defendant resides, or if there be more than one defendant, in the circuit court for any county in which the violation occurred.

Source: SDC Supp 1960, § 42.0714 (2) as enacted by SL 1961, ch 211, § 1.

[45-9-70](#). Shutting down and sealing property or equipment by secretary for violation--Cancellation of lease or bond forfeiture.

The secretary of agriculture and natural resources, acting for the Board of Minerals and Environment, may shut down any operation and place under seal any property or equipment for failure to comply with the oil and gas law or rules, may enter upon any land and perform any operation that the operator fails to perform if ordered to do so in writing, and may recommend cancellation of any state lease and forfeiture under the bond for noncompliance with the applicable law, lease terms, and rules.

Source: SDC Supp 1960, § 42.0715 (3) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 251; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

[45-9-71](#). Action for injunction--Service--Order.

If it appears that any person is violating or threatening to violate any provision of this chapter, or any rule or order of the Board of Minerals and Environment, and unless the board without litigation can effectively prevent violation or threat of violation, the board shall bring suit against the person in the circuit court for any county where the violation is occurring or is threatened, to restrain the person from continuing the violation or from carrying out the threat of violation. Upon the filing of any such suit, summons issued to the person may be directed to the sheriff of any county in this state for service by the sheriff. In any such suit, the court has jurisdiction to grant to the board, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders and preliminary injunctions.

Source: SL 1943, ch 153, § 11; SDC Supp 1960, § 42.0711; SDC Supp 1960, § 42.0715 (1) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 252.

45-9-72. Failure of board to enjoin violation on request of person adversely affected--Action for injunction by affected person.

If the Board of Minerals and Environment fails to bring suit to enjoin a violation or threatened violation of any provision of this chapter, or any rule or order of the board within ten days after receipt of written request to do so by any person who is or will be adversely affected by the violation, the person making the request may bring suit in the person's own behalf to restrain the violation or threatened violation in any court in which the board might have brought suit. The board shall be made a party defendant in the suit in addition to the person violating or threatening to violate a provision of this chapter, or rule or order of the board, and the action shall proceed and injunctive relief may be granted to the board without bond in the same manner as if suit had been brought by the board.

Source: SDC Supp 1960, § 42.0715 (2) as enacted by SL 1961, ch 211, § 1; SL 2011, ch 165, § 253.

45-9-73. Procedure for issuance, suspension, revocation, and renewal of permits--Hearing--Uncontested recommendation.

The board, by rules adopted in compliance with chapter [1-26](#), may provide for the issuance, suspension, revocation, and renewal of any permits required under this chapter. Procedures shall provide for a recommendation on such permit by the secretary with an opportunity for a contested case hearing by the board on its own motion or upon protest by the applicant or any person. If the recommendation of the secretary is not contested, that recommendation shall become a final determination on the application. If an uncontested recommendation is for approval or conditional approval of the application, the permit shall be issued by the secretary consistent with the secretary's recommendation.

Source: SL 1991, ch 288, § 13; SL 1996, ch 262, § 7.

45-9-74. Hearing on application for order under chapter--Notice--Contested case hearing--Procedure.

The Board of Minerals and Environment shall provide an opportunity for public hearing, through public notice, on any application made for an order under this chapter. The notice shall comply with the provisions of chapter [1-26](#) and indicate, unless a person files a petition requesting a hearing by the deadline established in the notice, no hearing need be held. If held, the hearing shall be conducted in accordance with chapter [1-26](#). Any person who files a petition requesting a contested case hearing by the deadline established by the board shall be entitled to be heard during the hearing. The board shall enter its order within thirty days after the hearing. If no hearing is held, the applicant shall submit a proposed order to the secretary for review and approval.

Source: SL 2012, ch 212, § 7.