

HEINONLINE

Citation:

Jerome Maslowski, Government Regulations Many and Varied, 49 Mich. St. B.J. 50 (1970)

Content downloaded/printed from [HeinOnline](#)

Sat Dec 30 08:27:11 2017

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[Copyright Information](#)



Use QR Code reader to send PDF to your smartphone or tablet device

By Jerome Maslowski

GOVERNMENT REGULATIONS MANY AND VARIED



Member of the Michigan Attorney General's staff since 1956, Mr. Maslowski is in charge of the office's natural resources division.

In the early days of our development the only statutory requirement was that well owners obtain a drilling permit before operations commenced, that wells be plugged under supervision and that well records be filed with the geological survey division of the Department of Conservation. Due to episodes of flagrant waste in the Muskegon field, the oil and gas associations of Michigan and the geological survey division concentrated on efforts to pass adequate legislation on control of oil and gas drilling and production procedures. Finally in 1939 the legislature passed Act 61, P.A. 1939, which, with minor amendments, serves as present authority to prevent waste in the drilling, completion, producing and plugging of wells for oil and gas.

The exploration of oil and gas is under the jurisdiction of the state supervisor of wells, who is also the state geologist in charge of the geological survey division.¹ The oil and gas staff of the geological survey division has charge of administering and supervising the oil and gas operations in Michigan.²

Act 61 is based on the prevention of wastes. The primary purpose of the statute is to insure that the fewest number of wells are drilled to recover the greatest amount of oil and gas, Act 61 is supplemented by Act 326, P.A. 1937,³ relating to the drilling and plugging of gas wells and providing for the jurisdiction of the supervisor of wells. The bulk of the wells are, however, drilled and operated under Act 61.

Rules and regulations have been promulgated under both of these acts. Review of the regulations passed under Act 326 indicates that they are not as com-

1. Act 65, P.A. 1869, CL '48, 321.1 MSA 1967 Rev. Vol. 13.41 *et seq.* Duties transferred to the Conservation Department, now Department of Natural Resources. Act 17, P.A. 1921, as amended, CL '48 Sec. 299.2 MSA Sec. 13.2 - MCLA 16.352, Act 353, P.A. 1968.

2. Act 61, P.A. 1939 CL '48 Sec. 319.1 *et seq.* MSA 139(1) *et seq.*

3. CL '48 Sec. 319.51 MSA 13.138(1) *et seq.*

prehensive as under Act 61.⁴ This is not a disadvantage, because after gas wells are drilled and start producing the Public Service Commission takes over and regulates the amount that may be produced. The jurisdiction of the supervisor returns after production ceases, when it becomes necessary to plug the well. It is necessary, however, to secure a permit from the supervisor of wells whether the drilling is under Act 61 or under Act 326.

The regulations under Act 61⁵ provide that permits may be issued for oil or gas wells, disposal wells, storage wells and wells drilled in connection with secondary recovery or pressure maintenance, and the development of reservoirs for the storage of liquid petroleum gas. The regulations also provide that the exact location of the well must be established by a competent surveyor, engineer or company personnel. A survey is necessary showing footages from nearest $\frac{1}{4}$ section and property lines and information relative to distances and directions of the well location from special hazards such as lakes, streams, drainage ways, swamps, marshes, regularly used buildings, power lines and so on. The surveys are to be submitted in triplicate. Elevation data is also necessary in addition to this information.

Permits are necessary to drill wells for geological information and also where wells are reworked for oil or gas storage.

Permits may be transferred under Act 61, Rule 105. Change of ownership requires a transfer of permit. It is advisable in all instances to comply with changes of ownership inasmuch as the permittee is always held responsible for whatever arises in connection with the operation of the well and likewise, failure to transfer a permit may result in assumption of unwarranted liability.

4. Regulations under Act 326 entitled General Regulations Governing The Spacing, Drilling, Deepening and Plugging of Wells for Natural Gas Regulations; under Act 61 entitled General Regulations Governing Oil and Gas operations in the State of Michigan.

5. Act 61, general regulations, rules 101 to 104.

Generally, the application should be made under Act 61. If expected that it will be only a gas well, then permit could be applied for under Act 326.

SURETY BOND REQUIRED

Each person who drills a well must file a surety bond with the supervisor under Act 61 and Rule 106 on a form provided by the supervisor, which has been executed by a responsible surety company authorized to do business in the state of Michigan. The amount for a surety bond is \$2,500 for a single well, or \$5,000 for a blanket bond. This bond is a performance bond and insures that the applicant will operate his drilling and well development under the rules and the act. Liability on the bond is conditioned upon compliance with the law, rules and regulations, and orders of the supervisor. This liability shall continue until the ownership of the well, or wells, has been assumed by another person, or the well has been abandoned and satisfactorily plugged, the site cleaned up and all logs, plugging records and other information required by the law filed with and approved by the supervisor.⁶ In case a person is in default the supervisor will look to the surety for immediate compliance.

A permit does not contain a time limitation.⁷ The permit allows the drilling of one well to 40 acres for an oil well, or one well for 160 acres for a gas well.⁸ These are the minimum spacings required. The supervisor may permit the drilling of a well on a unit less than 40 acres in the case of an exploratory well, provided a statement is filed that there has been an attempt to communitize, which has failed. Should a discovery well be completed on such a partial drilling unit, a full drilling unit may be formed by voluntary or compulsory pooling. Exceptions to drilling on 40 acres may also be made in the case of development wells. Likewise, special orders

6. Act 61, Rule 110, termination of bonds.

7. Act 61, Rule 112, work must commence within six months.

8. Act 61, Rule 201, sets location and spacing including 40-acre spacing; Act 326, Rule 14, under drilling sets 160-acre spacing.

may be adopted for spacing units smaller or larger than the basic 40 acre unit. The regulations provide for voluntary and compulsory pooling of small tracts to provide full drilling units.⁹ In the case of compulsory pooling, pooling is accomplished by petition. If a land owner does not pool voluntarily, he usually is subject to a penalty.

The petition must set out the following information:

1) The legal description of the drilling unit affected and identification of the applicable spacing order.

2) The ownership of the interests within the drilling unit.

3) Certified statements indicating in detail what action the petitioner has taken to obtain a voluntary pooling agreement.

4) Whether or not the petitioner desires to drill the well on the unit, and the recommendation of the petitioner as to what arrangements will be just and equitable to all owners within the drilling unit.

5) The estimated costs of drilling, completing and equipping the well.

The hearing is to be scheduled within 30 days. Hearings are held after notice has been published on two consecutive dates at least ten days before the hearing.

The pooling order authorizes the drilling of a well within 90 days.¹⁰ The order states the terms and conditions under which each of the owners may share in the interest working production of the well, if it is producible. The order shall provide for conditions under which each owner who has not voluntarily agreed to pool may share in the working interest. There are several options which may be taken. The owner may pay the party authorized to drill the well for a proportionate share of the cost of drilling, completing and equipping the well, whether it be a producer or dry hole, or he may await the outcome of the drilling of the well and allow the driller to take

out costs from his share of production. In such event he may be liable for an additional percentage of such costs.

The regulations contain various details which relate to the preparation of the well to prevent pollution; they also set out rotary drilling procedures, cable tool and rotary-cable tool combination drilling procedures. These technique methods will not be developed in this discussion.¹¹

COMPLETE RECORD NEEDED

It might be noted that every person who drills a well is required to file, within 30 days after the drilling, acidizing, fracturing and testing incidental to the completion of the well have been accomplished, a complete log or record of the well, duly signed, on forms prescribed by the supervisor. The contents of the log are specified in the rules. The regulations also provide for deepening, reworking operations and directional drilling.

The regulations are rather specific with relation to proration.¹² Proration of production from any oil or gas pool or field may be established by order of the supervisor following a public hearing before the supervisor and advisory board. The proration order specifies the maximum amount of gas which may be produced per well per 24-hour day for wells completed in compliance with an established drilling unit and well spacing pattern.

After a discovery well, a voluntary agreement may be made with the operator as to how much a well can produce in a day. After two or three wells are drilled in the area, a hearing is generally held at which time a formal proration order is issued to establish a limit per well per day. Limits may vary from one field to another. It might be pointed out that sometimes it is possible to set up voluntary allowables; however, if there is a lack of cooperation, then this can be set up pursuant to a hearing and an order.

11. See rules under Act 326, P.A. 1937, as amended, and Act 61, P.A. 1939, as amended.

12. Act 61, general regulations, rule 501, *et seq.*

9. Sec. 13 of Act 61 and Sec. 20 of Act 326, also general rules 204 and 205.

10. Act 61 general regulations, Rule 205.

As we previously noted, the statutes and regulations are keyed to prevent waste. The geological survey division keeps track of gas and oil ratios so as to prevent waste. When the ratio changes, the allowable changes also. Sooner or later production from a well can taper off. Thereupon application can be made to use secondary recovery methods. Any person desiring to inject water, air, gas, or any other fluid for the purpose of secondary recovery or pressure maintenance shall file an application with the supervisor.¹³ The supervisor then holds a public hearing. In most Michigan cases, secondary recovery is limited generally to water injection. Quarterly, semi-annual and annual reports are to be filed for such projects.

There comes a time in the life of any well when it must be plugged.¹⁴ No person shall begin the plugging of any well until he first shall have notified the supervisor of his intention of abandoning such well and receiving instructions for the plugging operations. The rules provide for method and material to be used in plugging, specifying that casing shall not be pulled without obtaining permission of the supervisor and providing that there shall be cleanup of the site.

Where the owner of a well refuses to plug or cleanup, then the surety comes in. Sometimes it may be necessary to get a court order to enforce cleanup. There have been few instances where it has been necessary to go into court to compel plugging—those cases that have commenced in our courts for plugging have generally been settled voluntarily after commencement.¹⁵

PUBLIC HEARINGS PROVIDED

The rules and regulations provide in detail for public hearings on oil and gas matters. A public hearing may be initiated by petition or may be scheduled by the supervisor. The types of hearings scheduled by the supervisor of wells are as follows:

A) Hearing before the supervisor of

13. General regulations, rule 701, *et seq.*

14. General regulations, rule 801, *et seq.*

15. Penalties are provided under Act 326, Sec. 12, and Act 61, Sec. 18b.

wells and the advisory board:

The purpose of this type of hearing is to determine broad policy or to consider the adoption of a rule, regulation or order having field-wide, area-wide, or state-wide application—such as the adoption of a well spacing order, a proration order, etc.¹⁶

B) Hearing before the supervisor of wells only:

The purpose of this type of hearing is to consider matters of local concern in the administration of rules, regulations or orders of the supervisor, such as the granting of exceptions in the issuance of permits, the pooling of properties to form a drilling unit, a hearing to show cause, etc.¹⁷

The regulations provide in detail as to what must be included in the petitions filed for either type of hearing. The procedure at these hearings is generally informal and testimony may or may not be transcribed, depending on the character of the hearing. The general statutes of the state of Michigan relating to hearings specify that testimony of the hearing need not be transcribed unless there is a rehearing or court review.¹⁸ Usually the hearing is transcribed when it is felt that the proceedings may go further. In addition to the rules concerning public hearings in the regulations, the acts concerning administrative procedures may be applicable.

Enforcement of the regulations or orders under Act 61 is usually through court order. The circuit court of Ingham County has in all instances concurrent jurisdiction thereon.

The violation of the rules and regulations may be considered a misdemeanor, with misdemeanor penalties. False statements and other matters under Section 19 of Act 61 may be subject to a \$1,000 fine, or imprisonment for three years, or

16. See rule 1002, Act 61, general regulations.

17. See Rule 1002, Act 61, general regulations.

18. Act 197, P.A. 1952, CL '48, 24.101 MSA 3.560 (21.1) *et seq.*

both. In addition, there is a penalty clause that provides a person may be subject to a penalty of not to exceed \$1,000 a day for violation of rules, regulations or orders.

As noted earlier, Act 326, P.A. 1937, relates to wells that are drilled for natural dry gas. Rules have been promulgated under this act and have provided for the issuance of permits and the filing of a surety bond.¹⁹ A surety bond under this act must be in the amount of \$2,000 or it may be a blanket bond in the amount of \$5,000.²⁰

The rules also provide what methods of waste disposal are to be used, indicate requirements regarding casing and sealing, specify well records, and require that a log is to be filed. They also provide for deepening and reworking wells and for directional drilling.²¹

The rules provide that spacing of wells for natural dry gas in Michigan shall be one well for 160 acres. Application may be made for permit to drill natural dry gas wells in areas less than 160 acres where attempts at pooling have failed. Regulations are also contained relating to plugging that are somewhat similar to those found in Act 61. The penalties provided for in that act, and rules and regulations promulgated thereunder, are also similar in nature to those already discussed in regard to Act 61.²²

It is desirable at this time to devote some consideration to the matter of pollution and to safeguards of the fresh water of the state of Michigan. *First* — both Act 326 and 61 provide that brine or salt water produced shall be returned to underground formations. *Second* — it is specified that brine may be run to earthen reservoirs or pools for reasonable time under conditions approved by the supervisor. This type of temporary

19. Entitled General Regulations Governing The Spacing, Drilling, Deepening and Plugging of Wells for Natural Dry Gas.

20. Act 326, rule 3, entitled drilling.

21. Act 326, general regulations governing the spacing, drilling, deepening and plugging of wells for natural gas.

22. *Ibid.*

disposal is rarely approved and it has been the experience of the supervisor of wells and the geological survey division that where this has been permitted, it has caused many problems and is highly undesirable. *Third* — pollution caused by oil or gas operations is also contrary to Act 245, P.A. 1929, as amended. That act is administered by the Water Resources Commission, which is now a part of the Department of Natural Resources. Act 245 covers all waters of the state, including ground waters. The Water Resources Commission may issue orders of determination and enforce them in circuit court, if necessary. Under that act, section 6 provides that it shall be unlawful for persons to directly or indirectly discharge into the waters of the state any substance which is, or may become, injurious to domestic, commercial, industrial, agricultural, recreational or other uses which are being, or may be, made of such waters.

The pollution and fire control staff, formerly a part of geological survey division, has just recently been transferred to the Water Resources Commission. The duties of this staff are as follows: concern with oil and gas fires, pollution to fresh waters, corrective measures related to pipeline breaks, oil losses and related cleanup, and well blowouts. (Inspection of proposed well locations previous to issuance of permits to drill is now a responsibility of the regulatory staff of the geological survey division. This includes the construction of fills and dikes and final inspection and approval of well sites following abandonment.) Additional new responsibilities of the fire and pollution control staff include supervision of stream crossings by pipelines and the licensing of trucks used in the transportation of wastes. Finally, there is a definite responsibility on the supervisor to control pollution independent of the Water Resources Commission and he has to be most careful to exercise his responsibility in that field.

MEETINGS ARE MONTHLY

Public hearings are conducted before the supervisor and advisory board about

once a month. The advisory board consists of six members who serve for three years and are selected upon recommendation of oil and gas producers, and operators. This board meets at least once each month at Lansing, or other chosen locations. They consult with, and advise, the commission or supervisor. The advisory board is an informal board with no specific authority directed to it. Its purpose is to make recommendations to the supervisor, and the record shows that there have been relatively few times when the supervisor has disagreed with this board. The advisory board represents the industry. The hearings before the supervisor occur as needed and concern matters which have been pointed out previously. The Natural Resources Commission acts as an appeal board for decisions made under either act.²³

Much of this discussion so far has dealt primarily with drilling and proper operating procedures. It might be noted that the supervisor does penalize for carelessness and may regulate production for a period of time because of waste from overproduction; also, production may be curtailed because of loss from fires.

In addition to Act 61 and Act 326, there is Act 197, P.A. 1959, providing for unitization.²⁴ Under this act a petition must be filed by owners of record of 75% of the production. This includes 75% of the $\frac{1}{2}$ holders and 75% of the $\frac{1}{4}$ interest holders. Whenever a company proposes to take over a field, it has to petition and a hearing must be held.

The act's section 4 requires that the petition contain the description of the pool, the names of all persons owning or having an interest, a description of the type of operations contemplated, and a recommended plan. After filing of the petition and after notice and hearing, the supervisor makes an order pursuant to section 5. After consulting with the board, if he finds that the unitization is necessary to substantially increase the

ultimate recovery; that the operations are feasible and will prevent waste and protect correlative rights; and that the cost of operations will not exceed the value of the additional oil and gas that are to be recovered, he shall issue an order.

Section 6 of the act requires that the order of the supervisor shall include a description of the area; a statement of the operations contemplated; allocation to the separately owned tracts in the unit of all the oil and gas that is to be produced; provisions for the manner of financing and an apportionment of costs, procedures for taking over wells, equipment and properties; provisions for supervision; provision for time of commencements of unitization and, finally, for dissolution of affairs.

Section 7 of the act declares that no order of the supervisor is to become effective until the plan is approved by those persons who have to pay 75% of the cost and also those persons who own at least 75% of the production or proceeds thereof. In lieu of the foregoing requirements, the supervisor may, on his own motion, hold supplementary hearings and declare the plan effective and set a date for commencement of operations.

An order providing for unit operations may be amended by subsequent order. See section 9.

Each unit created under provisions of this act shall, as specified in section 16 through its operator, be capable of suing, of being sued, and of contracting as such in its own right, if the plan so provides. The act provides that, subject to reasonable limitations, the unit has a first and prior lien for costs incurred upon the leasehold estate and other gas rights exclusive of the $\frac{1}{4}$ share.

The act also provides for procedures for amendment and, in addition to specific provisions contained in the act, stipulates that hearings shall be in accordance with Act 197, P.A. 1959. Appeals may be taken from decisions of the supervisor to the appeal board, consisting of the supervisor and the advisory board. Violations of the act or rules may

23. Section 3 of Act 326, P.A. 1939, as amended, CL '48, 319.3 MSA Sec. 13.139(3).

24. Unit production of oil and gas, CL '48, 319.351 MSA 13.139(101) *et seq.*

be punished by penalty of not more than \$1,000 a day.

P.S.C. AUTHORITY

So much for the operations of the supervisor of wells and the geological survey division. We now can turn to the authority of the Public Service Commission in regard to gas wells. When a well is being drilled for gas or oil, it is under the authority of the supervisor, but his authority is suspended after completion and, thereafter, gas well production is regulated by the Public Service Commission by virtue of Act 9, P.A. 1929,²⁵ and rules and regulations as published in the Administrative Code effective in 1944, R 460.851 *et seq.*, as modified by subsequent amendments contained in the administrative code. These rules are supplemented from time to time by commission orders covering the transmission of gas. When a gas well ceases to produce, the supervisor and geological survey division take over and supervise plugging and cleanup.

We can summarize what we have said so far by indicating that our acts have served the needs of Michigan well and that they have managed exploration of wells with the minimum amount of waste to the natural resources of our state. Our laws protect the fresh ground water from injury by rigid requirements of drilling and casing.

In the many years that our acts have been in force, there have been few major

²⁵ CL '48 Sec. 483.101 MSA 23.1311 *et seq.*

amendments added. Temporarily the amendments were made for clarifications of detail. The most recent amendment was section 6, Act 61, P.A. 1939, which strengthened the mandate to the supervisor of wells insofar as the protection of waste was concerned, and to indicate that the supervisor of wells shall prevent waste. The section was further clarified to indicate that wastes from the drilling of wells shall be handled so as to prevent pollution not only of fresh water supplies, but also of all the inland lakes and streams, and of the Great Lakes and connecting waters.

The administration of the act has been helped considerably by the fact that comprehensive regulations have been enacted under the authority of the supervisor of wells. There has been relatively little litigation concerning Act 61 and this undoubtedly is due — in a large measure — to fair administration and adequate regulations that have been adopted under Act 61 clarifying administrative details.

The supervisor of wells and his staff and the oil industry have generally been well satisfied with the provisions of Act 61 and its administration. In fact, as we view it, many states that are producing oil and gas have only within recent years enacted some of the provisions contained in Act 61, particularly with respect to well spacing.

I would like to emphasize that our various acts and the rules enacted thereunder have served, and are serving, the conservation needs in the state of Michigan in an excellent fashion.

**35th ANNUAL MEETING
SEPTEMBER 21-25, 1970
THE DETROIT HILTON**