

Summer 1947

## Oil and Gas Conservation

Follow this and additional works at: <https://www.repository.law.indiana.edu/ilj>



Part of the [Legislation Commons](#), and the [Oil, Gas, and Mineral Law Commons](#)

---

### Recommended Citation

(1947) "Oil and Gas Conservation," *Indiana Law Journal*: Vol. 22 : Iss. 4 , Article 17.

Available at: <https://www.repository.law.indiana.edu/ilj/vol22/iss4/17>

This Note is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact [rvaughan@indiana.edu](mailto:rvaughan@indiana.edu).



**JEROME HALL LAW LIBRARY**

INDIANA UNIVERSITY  
Maurer School of Law  
Bloomington

## OIL AND GAS CONSERVATION

Chapter 277 creates an Oil and Gas Division within the Department of Conservation. The Act requires persons who drill oil and gas wells or persons who have the custody and control of the land upon which the well is sought to be drilled to first secure permits from the Department.<sup>1</sup> Permits expire one year from the date of issuance unless previously "acted upon."<sup>2</sup> The Department has authority to require an applicant for a permit to file a bond not exceeding one thousand dollars for each well, to provide for compliance with the Act.<sup>3</sup> The Attorney General may sue to restrain continuing

- 
17. Ind. Acts 1947, c. 159, § 46 specifically repealed Ind. Acts 1943, c. 175 as amended by Ind. Acts 1945, c. 355.
  18. Ind. Acts 1943, c. 175, § 4 as amended Ind. Stat. Ann. (Burns, Supp. 1945) § 47-1047.
  19. Id. § 4(h).
  20. Id. § 5(b).
  21. Id. § 9.
  22. Id. § 6(a).
  23. Id. § 6(b).
    1. Ind. Acts 1947, c. 277, § 19.
    2. Id. § 20.
    3. Id. § 18.

violation of the Act.<sup>4</sup> The penalty section provides for a fine not exceeding fifty dollars for each day of violation.<sup>5</sup>

The two sections of special interest are Sections 13 and 13-A. These empower the Department of Conservation to establish such drilling units as it finds reasonable and practical, except as limited by Section 9 (c).<sup>6</sup> Units may be established for the following three purposes: 1. For the prevention of waste; 2. To prevent the dissipation of natural resources; and 3. To avoid augmentation and accumulation of risk arising from the drilling of an excessive number of wells.<sup>7</sup> Two or more adjoining land owners may voluntarily agree to form a drilling unit,<sup>8</sup> but if they fail to do so, the Department of Conservation has a duty to establish a unit where the statutory reasons exist.<sup>9</sup> There is no authority to limit the production from any given well.<sup>10</sup> If drilling units are established, the owners of the component tracts must be afforded the opportunity to recover their just and equitable share of oil and gas in the common pool.<sup>11</sup>

Ignorance of scientific facts about oil and gas led an early Pennsylvania court<sup>12</sup> to lay down the "Rule of Capture," which became the accepted common law rule. It was believed that oil flowed as freely as subterranean waters. Oil pools are capped by gas domes. Water lies below the oil. The gas pressure is valuable in forcing out the oil.<sup>13</sup> Unregulated

- 
4. *Id.* § 24.
  5. *Id.* § 25.
  6. No spacing regulation may require allocation of more than twenty acres of surface area to an individual well for oil production from a limestone horizon, or more than ten acres from a sandstone horizon.
  7. Ind. Acts 1947, c. 277, § 13.
  8. *Id.* § 13-A(a).
  9. *Ibid.*
  10. *Id.* § 13-A(c).
  11. *Ibid.*
  12. *Westmoreland & Cambria Natural Gas Co. v. De Witt*, 130 Pa. 235, 18 A. 724 (1889). The Court said: "They (oil and gas) belong to the owner of the land and are part of it, so long as they are on or in it, and are subject to his control; but when they escape, and go into other land, or come under another's control, the title of the former is gone. Possession of the land therefore is not necessarily possession of the gas. If an adjoining, or even a distant, owner, drills his own land, and taps your gas, so that it comes into his well and under his control, it is no longer yours, but his."
  13. See Ford, "Controlling The Production Of Oil," (1932). 30 Mich. L. Rev. 1170.

drilling dissipates the gas pressure, because too many wells are drilled, and many are improperly located, draining from the gas rather than from the oil level.<sup>14</sup>

The State's power to legislate for the protection of its natural resources is based essentially upon its police power. Constitutionality of oil and gas conservation statutes has established the existence of two fundamental theories upon which the State may justify its exercise of the police power in this area: 1. By virtue of its interest in the protection of its natural resources, the State may legislate to insure against waste;<sup>15</sup> and 2. To insure ratable taking from a common reservoir or pool, the State may legislate to regulate the correlative rights of the common owners of the pool.<sup>16</sup> Certain constitutional checks have been urged against the exercise of the State's police power in oil and gas conservation. The most important of these checks are deprivation of property without due process of law,<sup>17</sup> denial of equal protection of the laws,<sup>18</sup> impairment of the obligations of contract,<sup>19</sup> and interference with interstate commerce,<sup>20</sup> all of which have been rejected.

Legislative regulation of drilling has proceeded slowly. In a leading case, the United States Supreme Court in 1900 upheld an Indiana statute<sup>21</sup> making it unlawful for a producer to allow a well to flow freely for more than two days after the striking of oil or gas. The statute was held to be a reasonable exercise of the police power, in that it prevented inequitable taking from a common source of supply, as well

- 
14. For a general discussion of oil and gas conservation statutes, see Ely, "The Conservation of Oil," (1933), 51 Harv. L. Rev. 1209; Marshall and Meyers, "Legal Planning of Petroleum Production," (1933) 42 Yale L.J. 702.
  15. *State v. Ohio Oil Co.*, 150 Ind. 21, 49 N.E. 809 (1898), *aff'd*, 177 U.S. 190 (1900).
  16. *Manufacturers Gas & Oil Co. v. Indiana Natural Gas Co.*, 156 Ind. 679, 59 N.E. 169 (1901).
  17. *Given v. State*, 160 Ind. 552, 66 N.E. 750 (1903); *Townsend v. State*, 147 Ind. 624, 47 N.E. 19 (1897).
  18. *Champlin Refining Co. v. Corp. Comm. of Oklahoma*, 286 U.S. 210 (1932).
  19. *Walls v. Midland Carbon Co.*, 254 U.S. 300 (1920).
  20. *Manufacturers Gas & Oil Co. v. Indiana Natural Gas Co.*, 156 Ind. 679, 59 N.E. 169 (1901); *Corwin v. Indiana & Ohio Oil and Gas Co.*, 120 Ind. 575, 22 N.E. 778 (1899); *Consumers Gas Trust Co. v. Harless*, 131 Ind. 446, 29 N.E. 1062 (1892).
  21. Ind. Acts 1893, c. 136, § 1, Ind. Stat. Ann. (Burns, 1933) § 46-306.

as waste of a natural resource.<sup>22</sup> The constitutionality of the same statute was again upheld<sup>23</sup> and still later was assumed.<sup>24</sup> Other statutes designed to prevent waste of oil and gas have been upheld.<sup>25</sup> The Oklahoma Well Spacing Act was more recently upheld in *Patterson v. Stanolind Oil & Gas Co.*<sup>26</sup> There, the Corporation Commission of Oklahoma divided certain rural areas into ten-acre drilling units. Plaintiff owned most of one unit, and the well for that unit was located wholly on his land. The statute provided that each of the various owners of tracts making up a drilling unit should share in the oil royalties in the proportion that the acreage of his tract bore to the total acreage of the drilling unit. Plaintiff sought to recover all the royalty of oil produced from the well, contending the statute violated the contract, due process, and equal protection clauses of the federal constitution. The Oklahoma Court held the statute valid as a reasonable exercise of the police power. On appeal, the United States Supreme Court held that no substantial federal question had been raised, and the appeal was dismissed for want of jurisdiction.<sup>27</sup>

Factually, there would seem to be little distinction between the plan upheld in *Marrs v. City of Oxford*<sup>28</sup> and the plans provided for by the Indiana Act. Under the plans used in the *Patterson* and *Marrs* cases, a pool may have a number of operators drilling small units. Under the Indiana Act, the same result may be reached, since there is no requirement that a drilling unit cover an entire pool,<sup>29</sup> and since one operator is appointed by the Department of Conservation for each drilling unit.<sup>30</sup> In somewhat analogous situations involving drainage and irrigation districts, similar plans have been upheld.<sup>31</sup>

---

22. *Supra*, n. 15.

23. *Given v. State*, 160 Ind. 552, 66 N.E. 750 (1903).

24. *McDonald v. Carlin*, 163 Ind. 342, 71 N.E. 961 (1904).

25. See Note, 99 A.L.R. 1119 (1935).

26. *Patterson v. Stanolind Oil & Gas Co.*, 182 Okl. 155, 77 P.(2d) 83 (1938).

27. *Accord, Marrs v. City of Oxford*, 24 F.(2d) 541 (D. Kan., 1928), *aff'd*, 32 F.(2d) 134 (C.C.A. 8th, 1929), *cert. denied* 280 U.S. 573 (1929).

28. *Ibid.*

29. Ind. Acts 1947, c. 277, §13-A.

30. *Supra*, n. 10.

31. *Wurts v. Hoagland*, 114 U.S. 606 (1885).

Where unitization is brought about by a voluntary pooling of interests, there can be little doubt as to its validity, with the possible exception of a violation of anti-trust laws. The Indiana Act provides that agreements approved by the Department of Conservation shall not be construed to violate state anti-trust laws.<sup>32</sup> At best, however, the success of any plan of voluntary unitization is contingent upon the cooperation of all owners. Some statutory compulsion is required. Perhaps, as has been suggested by authority, compulsory unitization of whole fields or of whole pools is the best solution.<sup>33</sup> [At any rate, Indiana has taken a long step in the right direction; and the constitutionality of the Indiana Act seems not seriously in doubt, in the light of the *Patterson* and *Marrs* cases.]

### PROCEDURE

*Introduction*—The 1947 General Assembly followed its predecessors in enacting several statutes in the field of judicial procedure.<sup>1</sup> Inasmuch as the validity of legislative activity in this field is still an open question in Indiana,<sup>2</sup> and since either judicial or legislative superiority in rule making may be rationally defended and supported by authority,<sup>3</sup> no opinion is expressed herein on the validity of the 1947 legislation in the field of procedure on the grounds that it invades the judicial function. The question of legislative power has been re-examined by the Indiana Supreme Court in two recent decisions.<sup>4</sup> It would seem that the present court has declared in its last pronouncement upon the subject that many so-

32. Ind. Acts 1947, c. 277, §13-A(e).

33. See German, "Compulsory Unit Operation of Oil Pools," (1931), 17 A.B. A.J. 393.

1. For a collection of statutes passed since the rule-making act of 1937, see 1 Gavit, "Ind. Pleading & Practice" (1941-5) §§ 3, 4, 12, 13.
2. No case has been found in which a legislative rule adopted since 1937 and a rule by the court have presented the square issue of legislative or judicial superiority in this field.
3. See 1 Gavit, *op. cit.* supra n. 1, §§ 2-14 and cases cited; 1 Sutherland, "Statutory Construction" (3rd ed., 1943) § 226; Wigmore, "All Legislative Rules for Judiciary Procedure Are Void Constitutionally" (1928) 23 Ill. L. Rev. 276; Notes, 110 A.L.R. 22 (1937), 158 A.L.R. 705 (1945).
4. *Kostas v. Johnson*, 69 N.E. (2d) 592 (Ind. 1946), (1947) 22 Ind. L.J. 284; *Square D. Co. v. O'Neal*, 72 N.E. (2d) 654 (Ind. 1947).