

# 1938

## CHAPTER 15.

### An Act for the Conservation of Oil and Gas Resources of the Province of Alberta.

(Assented to April 8, 1938.)

**HIS MAJESTY**, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Oil and Gas Conservation Act, 1938.*" Short title

2. In this Act unless the context requires a contrary Definitions meaning,—

- (a) "Absorption Plant Naphtha" means that portion of the hydrocarbons in the well flow stream which is recoverable as liquid only by means other than gravity; "Absorption plant naphtha"
- (b) "Area" means any land or lands constituted as an area by this Act; "Area"
- (c) "Board" means the Board constituted by this Act and appointed pursuant thereto; "Board"
- (d) "Common reservoir" means any petroleum or natural gas field or part thereof which comprises and includes an area which is underlaid, or which from geological or other scientific data or experiments or from drilling operations or other evidence, appears to be underlaid by an accumulation of petroleum or natural gas; "Common reservoir"
- (e) "Cubic feet of gas" means the volume of gas expressed in cubic feet and computed at a base pressure of 14.4 pounds per square inch and a standard base temperature of 60° Fahrenheit, with corrections according to the instructions laid down in Gas Measurements Report No. 2 of the American Gas Association or amendments thereof, including correction for supercompressibility according to engineering practice approved by the Board; "Cubic feet of gas"
- (f) "Gas oil ratio" means the relationship of cubic feet of gas to barrels of oil produced therewith measured at atmospheric temperature and pressure; "Gas oil ratio"
- (g) "Gas well" means any well whose gas production per barrel of oil is of greater economic value than the oil produced therewith, and for the purposes "Gas well"

- of this definition the value of the gas shall be deemed to be four cents per thousand cubic feet at the well head;
- "Oil well" (h) "Oil Well" means any well whose oil production is of greater economic value than the gas produced therewith, and for the purpose of this definition the value of the gas shall be deemed to be four cents per thousand cubic feet at the well head;
- "Operator" (i) "Operator" means any person conducting any petroleum or natural gas operations;
- "Operator's agent" (j) "Operator's Agent" means the person appointed by the operator to represent such operator;
- "Owner" (k) "Owner" when used in connection with any well or producing property, in addition to its ordinary meaning, includes the person who is entitled to dispose of any production from such well or producing property, or who would be so entitled in the absence of any contract governing the disposition of such production thereof;
- "Petroleum" (l) "Petroleum" includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation; and the expression "Petroleum product" shall have a similar meaning;
- "Pool" (m) "Pool" means an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both, and includes any zone of a general structure, which is completely separated from any other zone in the structure, which zone shall be deemed to be a separate pool;
- "Separator crude naphtha" (n) "Separator Crude Naphtha" means that portion of the hydrocarbons recoverable as a liquid from the well flow stream by means of traps or separators;
- "Waste" (o) "Waste" in addition to its ordinary meaning shall specifically include,—
- (i) The drowning with water of any stratum or part thereof capable of producing petroleum or natural gas;
  - (ii) Underground waste or loss however caused;
  - (iii) Permitting any natural gas well to burn wastefully;
  - (iv) The creation of fire hazards;
  - (v) Physical waste or loss incident to, or resulting from, so drilling, equipping, locating or operating any well or wells as to reduce or tend to reduce the ultimate recovery of petroleum or natural gas from any common reservoir;

- (vi) The escape into the open air, from a well producing both oil and gas, or either, of natural gas in excess of the amount which is necessary in the efficient drilling or operation of such well;
- (vii) The production of natural gas in excess of transportation or market facilities, or reasonable market demand for the type of gas produced;
- (viii) The production of crude petroleum oil in excess of transportation or market facilities or reasonable market demand;
- (ix) Surface waste or surface loss, including the storage either permanent or temporary of petroleum or any product thereof, in open pits, or tankage, or any receptacle declared to be inadequate by the Board, and all other forms of surface waste or loss, or destruction without beneficial use;
- (x) Waste or loss incident to or resulting from the unnecessary inefficient excessive or improper use of the reservoir energy, including the gas energy or water drive in any well or common reservoir;
- (xi) The production of natural gas in excess of transportation or market facilities, or reasonable market demand, unless such gas is returned to the horizon from which it originates or is stored under authority of the Board in some other horizon considered suitable for such storage; but in no event shall the storing of gas be permitted when by so storing, energy necessary to the production of crude petroleum oil will be dissipated;
- (xii) The production, transportation, distribution or use of natural gas or petroleum in such manner and in such amount or under such conditions as in the opinion of the Board constitutes waste;
- (xiii) The operation of any well with an inefficient gas oil ratio;
- (p) "Well" means any made orifice in the ground made by drilling, boring or in any other manner, from which natural gas or petroleum are obtained or obtainable.

3. This Act shall apply to every well producing any petroleum product whether drilled before or after the coming into force of this Act and notwithstanding the terms of any lease or grant from the Crown in the right of Canada or from any other person to the contrary.

Application  
of Act

Designation  
of areas by  
Order in  
Council

4. The Lieutenant Governor in Council may from time to time, upon the recommendation of the Board, by order, declare any part of the Province described therein to be an area for the purposes of this Act, and designate the name by which such area shall be known.

The  
Petroleum  
and Natural  
Gas Con-  
servation  
Board

5. There shall be constituted a Board to be called "The Petroleum and Natural Gas Conservation Board," consisting of not more than three persons who shall be appointed by the Lieutenant Governor in Council, one of whom shall be designated as chairman.

Appoint-  
ment of  
chairman  
and  
members of  
Board

6.—(1) The chairman first appointed to the Board shall hold office for one year from the date of his appointment, and thereafter during the pleasure of the Lieutenant Governor in Council; and every chairman subsequently appointed and every other member of the Board shall hold office for the term of five years from the date of appointment and upon the expiration of such term during the pleasure of the Lieutenant Governor in Council:

Provided always that the chairman and any other member of the Board may be removed from office by the Lieutenant Governor in Council upon address of the Legislative Assembly.

Their  
remunera-  
tion

(2) The chairman and other members of the Board shall receive such remuneration as may be fixed by the Lieutenant Governor in Council.

Their  
qualification

(3) Neither the chairman nor any member of the Board shall have any monetary interest of any description directly or indirectly in any property which is or may become petroleum producing, or in any business or undertaking carried on for the purpose of gathering, collecting, processing, handling or distributing any petroleum product.

*Pro tempore*  
appoint-  
ments

7. In the case of death, illness or absence from the Province of Alberta, of a member of the Board or of his inability to act from any cause, the Lieutenant Governor in Council may appoint some person to act *pro tempore* in his stead and the person so appointed shall have all the powers and perform all the duties as a member of the Board.

Purpose of  
appointment  
of Board

8. The Board is appointed for the general purposes of effecting conservation of the petroleum and natural gas resources of the Province by,—

(a) preventing the exhaustion from a producing petroleum area of the energy necessary to produce petroleum by any methods shown to be uneconomic in that such method of production allows this exhaustion without proportionate recovery of petroleum to the end that the maximum ultimate recovery of petroleum can be attained;

(b) prorating the production of petroleum or natural gas from the wells in any area to the economic

markets available in such manner that an uneconomic reduction of price is not brought about and in such manner that an equitable share of the available markets for petroleum or natural gas is available to each producing well.

**9.** The Board shall be a body corporate and shall have the full power and authority to perform, execute and carry out all the duties and functions assigned to the Board by this Act, and for that purpose to do all and any acts and things necessary for the performance, execution or carrying out of any such duty or function, or are incidental thereto.

Board a  
body  
corporate  
powers and  
capacity  
thereof

**10.** The office of the Board shall be at such place as may be from time to time approved by the Lieutenant Governor in Council.

Location of  
office

**11.—**(1) All meetings of the Board shall be held at the office of the Board and at the call of the chairman.

Meetings

(2) The chairman shall call a meeting of the Board immediately upon being requested so to do in writing by the other two members of the Board.

(3) Twenty-four hours' notice shall be given of all meetings of the Board, unless all the members thereof are present and waive the giving of the notice hereby prescribed.

(4) The chairman and one other member of the Board shall constitute a quorum at any meeting of the Board.

**12.** The chairman shall be the executive officer of the Board and shall sign all orders or directions issued by authority of the Board and shall have the full power to act for, on behalf of and in the name of the Board in the execution, performance and carrying out of any act, matter or thing which is within the power of the Board subject only to such express directions or decisions as may have been given or made by a resolution of the Board passed at a regularly held meeting thereof.

Chairman  
chief  
executive  
officer of  
Board and  
his powers

**13.—**(1) The Board shall keep at its office,—

- (a) full and complete minutes of all business transacted at its meetings;
- (b) full and complete accounts of all tests and investigations made by or by the direction of the Board pursuant to this Act;
- (c) full and complete accounts and records of all the financial business of the Board.

Records to be  
kept by the  
Board

(2) All such minutes, accounts and records shall be open to the inspection of any officer of the Department of Lands and Mines; any officer of any corporation distributing gas from the area to consumers of gas; any officer of any city, town or village in which such gas is distributed, and any

person having any interest in the nature of ownership in any well in the area, or any other person duly authorized in writing by him, at any time during ordinary office hours.

(3) All such minutes, accounts and records shall be deemed to be of so public a nature as to be admissible in evidence on their mere production by the Board or any employee thereof.

Powers of  
the Board  
in relation to  
conservation

**14.** For the purpose of regulating the production of petroleum or any classification thereof for the purpose of preventing the wasteful or uneconomic production thereof, and for the purpose of conserving the petroleum resources of the Province and of any area therein, the Board is hereby authorized and empowered,—

- (a) to appoint such officers, servants and employees as the Board deems necessary for the transaction of its business and to prescribe their duties, conditions of employment and remuneration;
- (b) to obtain the services of such engineers, accountants and other professional persons as the Board deems necessary for the proper and convenient transaction of its business;
- (c) to make from time to time such enquiries and investigations into the production of petroleum or any classification thereof in the Province and in all or any areas in the Province or at any well or wells at such times and in such manner as may seem advisable to the Board; and for the purpose of making any such enquiry or investigation, the Board and each member thereof, shall have all the powers which may be conferred upon a commissioner appointed pursuant to *The Public Inquiries Act* for the purpose of taking evidence upon oath, compelling the attendance of witnesses and the production of documents;
- (d) to make regulations or orders prescribing the amount of the total production of petroleum or any specified classification thereof which may be produced during any period mentioned therein, or until such time as the Board may further order, from all or any wells in the Province or from all or any wells in any specified area or areas, or at any specified well or wells;
- (e) to make regulations or orders from time to time prescribing the conditions under which the production of petroleum or any classification thereof, is permitted at all wells or any specified well or wells, and prohibiting the production of petroleum in contravention of any such regulation or order;
- (f) to make regulations or orders with respect to any area prescribing from time to time the amount of production of petroleum or any classification thereof which is permitted at each and every

well in the area, and prohibiting any production at any well in excess of the amount so prescribed and providing for the surrender to the Board of the right to produce the amount of production so prescribed and for the resale by the Board of the right so surrendered, upon such terms, in such manner, and to such extent as the Board deems proper, to the owners or operators of other wells in the same area, and for the payment of the proceeds of such resales into a compensation fund and for the payment out of such fund of compensation to the persons surrendering such right to produce, having regard to the amount of production so surrendered; but in no event shall the Board permit the dissipation of energy necessary for the production of oil;

- (g) to make regulations and orders prohibiting the operation of any well unless the gas produced thereat, in excess of the amount sold or used for the purpose of generating power, heat and light, and of chemical manufacturing, is replaced in such geological horizon as may be designated by the Board in such manner and by such means as may be approved by the Board;
- (h) to negotiate agreements from time to time with the owners of producing wells for the purpose of providing for the payment to the owners of wells who have surrendered to the Board the right to produce from such wells, such compensation as the Board considers fair and reasonable;
- (i) in case the Board is unable to provide compensation to such extent as the Board considers to be fair and reasonable for the owners of wells who have surrendered to the Board the right to produce from such wells, to provide by regulation for the payment of compensation for such owners in such amount as the Board considers fair and reasonable, and for the levying of the amount required to pay such compensation in any area by means of a special uniform rate upon the assessed value of all the producing wells in the area;
- (j) to provide by regulations or orders for prorating the production of petroleum from the wells in any area or areas to the available economic markets in such manner that in so far as it is possible the maximum ultimate recovery of petroleum may be obtained and equity between operators in a common pool may be maintained.

Any proration formula which may be adopted by the Board shall have as some of its factors acreage and bottom hole pressure.

The Board may in its uncontrolled discretion use other factors. However in no formula shall the

potential factor have more than twenty-five per cent weight. Potential shall be determined by restricted flow.

In prorating allowables in areas having excessive gas oil ratios or water oil ratios, the Board shall balance allowables on a basis of volumetric withdrawal;

- (k) to fix well spacing in any area or areas;
- (l) to determine what shall constitute a minimum well in any field, taking into consideration in such determination economic and physical factors;
- (m) to determine the acreage assignable to any well or wells from the evidence available.
- (n) to determine by regulation or order from time to time, and for any period, the amount of crude petroleum which can be transported by means of existing and available transportation facilities, and the amount of crude petroleum required to supply the prevailing market requirements therefor;
- (o) to prescribe rules and regulations as to the production, transportation, distribution, or use of all or any petroleum products, and the uses which may be made thereof or the amount which may be produced, transported or used, either generally or in any area at any specified well or wells and for any specified purpose.

Registration of address for service of owners of wells

**15.** Every person who is the owner of any well in the province shall register with the Board an address for service in the Province of Alberta.

Service of notices and orders by mail

**16.** All notices and orders affecting or respecting any well shall be deemed to have been served upon the owner of such well upon the expiration of twenty-four hours, exclusive of Sundays and holidays, from the time of sending such notice or order by prepaid mail to such owner at his registered address for service.

Service of notices and orders by posting up in office of Board

**17.** If there be no registered address for service as aforesaid, in respect of any well, all notices and orders respecting such well shall be posted up in the public office of the Board and shall be kept so posted up for twenty-four hours, exclusive of Sundays and holidays, and upon the expiration of the said period shall be deemed to have been duly served upon the owner of such well.

Requirements as to records by owners of producing wells

**18.—(1)** Every person who is the owner of a producing well, shall keep at his office or other place of business within the Province, complete and accurate records of the production of all petroleum products from his well and of the disposition made thereof, and shall produce such records at all reasonable times when requested so to do by any member of



the Board, or any person authorized by the Board, and shall afford such member or person facilities for inspecting the same and making copies thereof and extracts therefrom.

(2) Every such person who makes any default in complying with any of the requirements of this section, shall be guilty of an offence and liable on summary conviction for any such default, in the case of a corporation to a fine of not more than five hundred dollars and costs, and in the case of any other person to a fine of not more than two hundred and fifty dollars and costs, and in default of payment to imprisonment for a term of not more than sixty days.

Breach of requirements an offence: penalty

19. The Board shall be entitled to require from any Department of the Government Service, any information required by the Board for the purpose of carrying out the duties and exercising the powers imposed or conferred upon the Board by this Act, and every official of every such Department shall, subject to the approval of the Minister presiding over the same, give to the Board such assistance as he is able to afford and the Board may require.

Right of Board to obtain information from Departments of the Government service

20.—(1) For the purpose of providing the money required for the purpose of paying the salaries of the members of the Board and the employees thereof, and any other current expenses incurred in the administration of this Act, the Board shall, and it is hereby empowered to make an annual assessment of every producing well in the province, and for that purpose to employ such persons as assessors as the Board thinks fit, such assessment to be made in the year in which the Board is constituted as soon as possible after it is constituted and in every subsequent year in the month of January.

Annual assessment by Board of all producing wells

(2) As soon as the assessment so made is completed, the same shall be considered by the Board, and thereupon the Board may confirm the same or may amend and alter the same and confirm the same as amended or altered, and shall then proceed to fix a date for the hearing of appeals from the assessment, which date shall be at least thirty days subsequent to the date at which it is so fixed, and the Board shall immediately after fixing such date cause to be sent by mail an assessment notice to the registered owner of each well, setting out the name of the owner, the description of the well and the amount at which the same has been assessed.

Confirmation of assessment, notices thereof, appeals therefrom and their determination

(3) A copy of the assessment roll shall be kept posted up at the office of the Board in a conspicuous place for thirty days before the date fixed for the hearing of appeals therefrom.

Posting up of roll

21.—(1) The Board shall immediately upon its constitution, and in every year thereafter in the month of January, prepare and adopt an estimate of its expenditures for the current year for the salaries of its members and of the employees of the Board and the administration of this Act.

Annual estimate of expenditures

Striking of uniform rate and levy thereof	(2) As soon as the assessment roll has been confirmed, the Board shall strike a uniform rate upon the aggregate assessed value of all the wells upon the assessment roll sufficient to produce the total amount of the estimated expenditures of the Board, and shall levy upon the owner of each well a rate calculated upon the assessed value of such well at the rate so struck.
Liability for payment of rate	(3) The amount of the rate so payable in respect of each assessed well shall be payable by the person whose name appears upon the assessment roll as the owner thereof, and by any other person who is for the time being the owner thereof or entitled thereto.
When rate deemed to be payable	<b>22.</b> —(1) Every rate levied pursuant to this Act shall be deemed to be payable in the year in which the Board is first constituted on the day upon which it is so constituted, and in every subsequent year on the first day of January.
Demand for rate	(2) The Board shall proceed upon striking the rate to send a notice demanding payment thereof to the owner of each well included in the assessment roll.
Deduction in respect of rate as against persons entitled to royalties and similar payments	<b>23.</b> In case any gross royalty is payable in respect of any well, either to the Government of the Province or to any other person, or in case any part of the production of any well is deliverable by the owner of such well to any other person then and in any such case, the owner of such well who has paid any rate levied in any year pursuant to this Act in respect of such well, shall be entitled to make a deduction from the amount of the royalty or production payable or deliverable by him in that year of such proportion of the total rate as the amount of the royalty payable or production deliverable bears to the total production of the well.
Recovery of rates in arrear—	<b>24.</b> In case default is made in the payment of any rate payable in respect of any well, for the period of thirty days after the date fixed for the payment thereof, the Board is empowered,—
by distress	(a) to recover the amount of the rate by distress upon any of the goods and chattels which may be found upon any land or premises occupied by the owner of the well, and for that purpose may by resolution authorize any person or persons named therein to execute and issue a distress warrant either generally or in any specified case;
from purchasers of production	(b) to cause notice to be given on behalf of the Board to any person who is the purchaser of any production from any well of the owner who has so made default in payment of his rate, setting out the name of the defaulter and the amount of the rate in default and requiring the payment of that amount, and upon the receipt of such notice all sums payable or to become payable by such purchaser, shall be charged with the payment of the amount of the rate

so in default in priority to all other claims and demands whatsoever and whensoever created; and such purchaser shall pay to the Board the amount of such rate out of the money so payable or to become payable by him without regard to any other claims or demands whatsoever, which claims and demands are hereby postponed to the payment to the Board.

**25.** The Board is hereby empowered to borrow from time to time on the security of the rates for the current year which are for the time being uncollected, such sums as may be required for the defrayal of the current expenditures of the Board.

Borrowing  
powers of  
Board

**26.** The Lieutenant Governor in Council may authorize and empower the Provincial Treasurer,—

- (a) to guarantee on behalf of the Province the due payment of any money borrowed pursuant to the last preceding section, together with the interest payable thereon, upon such terms and conditions as may be prescribed by the Lieutenant Governor in Council;
- (b) to advance to the Board from time to time out of the General Revenue Fund such sums as may be deemed advisable upon such security, at such rate of interest and such terms and conditions as may be prescribed by the Lieutenant Governor in Council.

Guarantees  
by Province  
of borrow-  
ings of  
Board and  
loans by  
Province to  
Board

**27.** The Board shall, with respect to any area, or with respect to any producing well situate elsewhere than in an area, be charged with the duty of enforcing in such area or with respect to such well, any regulations made pursuant to the provisions of *The Oil and Gas Wells Act, 1931*, and where any duty is imposed or power is conferred upon any person or official by any such regulation, such power and duty shall be deemed to be imposed or conferred upon such person or official as may be designated by the Board for the purpose; and any person or official so designated shall have the same duties and powers as if he had been named in the regulation.

Enforce-  
ment by  
Board of  
provisions of  
*The Oil and  
Gas Wells  
Act, 1931*, in  
respect of  
producing  
wells

**28.** No action shall lie against the Board or any member thereof or any officer, agent or employee of the Board, or any person acting under the authority of the Board, in respect of any act or thing done *bona fide* and in purported pursuance of any of the provisions of this Act or of any regulation or order of the Board made in pursuance and by the authority of this Act.

Immunity  
from actions  
of Board  
and certain  
other persons

**29.** Every order or regulation made by the Board pursuant to any of the provisions of this Act, shall, upon being served, have the same force and effect as if such order had been an integral part of and had been enacted by this Act.

Force of  
orders and  
regulations  
of Board

Non-compliance with any order of Board an offence

penalty therefor

**30.** Any person who makes any default in complying with any order of the Board as to the operation of any well in the area, shall be guilty of an offence and shall be liable on summary conviction therefor to a penalty of not more than two thousand dollars and costs and in the case of a continuing default to an additional penalty of five hundred dollars for each day after the first day during which such default continues.

Coming into force of Act

**31.** This Act is enacted in anticipation of the ratification by the Parliament of Canada of an agreement dated the fifth day of March, 1938, made between the Government of the Dominion of Canada of the one part and the Government of the Province of the second part, which agreement has been ratified by an Act of the Legislature of the Province enacted at the present Session thereof and entitled "*An Act to ratify a certain agreement between the Government of the Dominion of Canada and the Government of the Province of Alberta*"; and this Act shall come into force on a day to be fixed by the Proclamation of the Lieutenant Governor in Council but no such Proclamation shall be made until the said agreement has been ratified by the Parliament of Canada.