SUBCHAPTER V. OIL AND GAS CONSERVATION.

Article 27.

Oil and Gas Conservation.

Part 1. General Provisions.

§ 113-378. Persons drilling for oil or gas to register and furnish bond.

Any person, firm or corporation before making any drilling exploration in this State for oil or natural gas shall register with the Department of Environmental Quality. To provide for such registration, the drilling operator must furnish the name and address of such person, firm or corporation, and the location of the proposed drilling operations, and file with the Department a bond running to the State of North Carolina in an amount totaling the sum of (i) five thousand dollars ($5,000) plus (ii) one dollar ($1.00) per linear foot proposed to be drilled for the well. Any well opened by the drilling operator shall be plugged upon abandonment in accordance with the rules of the Department. (1945, c. 765, s. 2; 1971, c. 813, s. 1; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1987, c. 827, s. 110; 1989, c. 727, s. 118; 1997-443, s. 11A.119(a); 2011-276, s. 1; 2013-365, s. 5(a); 2015-241, s. 14.30(u).)

§ 113-379. Filing log of drilling and development of each well.

Upon the completion or shutting down of any abandoned well, the drilling operator shall file with the Department or other State agency, or with any division thereof hereinafter created for the regulation of drilling for oil or natural gas, a complete log of the drilling and development of each well. (1945, c. 765, s. 3; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 119.)

§ 113-380. Violation a misdemeanor.

Except as otherwise provided, any person, firm or officer of a corporation violating any of the provisions of this Article shall upon conviction thereof be guilty of a Class 1 misdemeanor. (1945, c. 765, s. 4; 1971, c. 813, s. 2; 1993, c. 539, s. 870; 1994, Ex. Sess., c. 24, s. 14(c); 2012-143, s. 2(a).)

Part 2. The Oil and Gas Conservation Act.

§ 113-381. Title.

This law shall be designated and known as the Oil and Gas Conservation Act. (1945, c. 702, s. 1.)

§ 113-382. Declaration of policy.

In recognition of imminent evils that can occur in the production and use and waste of natural oil and/or gas in the absence of equal or correlative rights of owners of crude oil or natural gas in a common source of supply to produce and use the same, and in the absence of adequate measures for the protection of the environment, this law is enacted for the protection of public interests against such evils by prohibiting waste and compelling ratable production and authorizing regulations for the protection of the environment. (1945, c. 702, s. 2; 1971, c. 813, ss. 3, 4.)

§§ 113-383 through 113-386. Repealed by Session Laws 1973, c. 1262, s. 86.

§ 113-387: Repealed by Session Laws 2014-4, s. 17(c), effective July 1, 2015, and applicable to energy minerals severed on or after that date.

§ 113-388: Repealed by Session Laws 2014-4, s. 17(c), effective July 1, 2015, and applicable to energy minerals severed on or after that date.

§ 113-389. Definitions.

Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in this law:

(1) "Base fluid" shall mean the continuous phase fluid type, such as water, used in a hydraulic fracturing treatment.

(1a) "Commission" shall mean the North Carolina Oil and Gas Commission.

(1b) "Department" shall mean the Department of Environmental Quality.

(1c) "Division" shall mean the Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality.

(2) "Field" shall mean the general area which is underlaid or appears to be underlaid by at least one pool; and "field" shall include the underground reservoir or reservoirs containing crude petroleum oil or natural gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; "field," unlike "pool," may relate to two or more pools.

(3) "Gas" shall mean all natural gas, including casing-head gas, and all other hydrocarbons not defined as oil in subdivision (7).

(3a) "Hydraulic fracturing additive" shall mean any chemical substance or combination of substances, including any chemical or proppants, which is intentionally added to a base fluid for purposes of preparing a hydraulic fracturing fluid or treatment of a well.

(3b) "Hydraulic fracturing fluid" shall mean the fluid, including the applicable base fluid and all hydraulic fracturing additives, used to perform a hydraulic fracturing treatment.

(3c) "Hydraulic fracturing treatment" shall mean all stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure that is expressly designed to initiate or propagate fractures in a target geologic formation to enhance production of oil and gas.

(4) "Illegal gas" shall mean gas which has been produced within the State of North Carolina from any well during any time that well has produced in excess of the amount allowed by any rule, regulation or order of the Department, as distinguished from gas produced within the State of North Carolina from a well not producing in excess of the amount so allowed, which is "legal gas."

(5) "Illegal oil" shall mean oil which has been produced within the State of North Carolina from any well during any time that that well has produced in excess of the amount allowed by rule, regulation or order of the Department, as distinguished from oil produced within the State of North Carolina from a well not producing in excess of the amount so allowed, which is "legal oil."

(6) "Illegal product" shall mean any product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal oil or illegal gas or from

any product thereof, as distinguished from "legal product," which is a product processed or derived to no extent from illegal oil or illegal gas.

(6a) "Lessee" shall mean the person entitled under an oil and gas lease to drill and operate wells.

(6b) "Lessor" shall mean the owner of subsurface oil or gas resources who has executed a lease and who is entitled to the payment of a royalty on production.

(7) "Oil" shall mean crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the reservoir.

(7a) "Oil and gas developer or operator" or "developer or operator" shall mean a person who acquires a lease for the purpose of conducting exploration for or extracting oil or gas.

(7b) "Oil and gas operations" or "activities" shall mean the exploration for or drilling of an oil and gas well that requires entry upon surface estate and the production operations directly related to the exploration or drilling.

(8) "Owner" shall mean the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and others.

(9) "Person" shall mean any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind.

(10) "Pool" shall mean an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of a general structure which is completely separated from the other zone in the structure is covered by the term "pool" as used herein.

(11) "Producer" shall mean the owner of a well or wells capable of producing oil or gas, or both.

(12) "Product" means any commodity made from oil or gas and shall include refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casing-head gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzine, 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, whether hereinabove enumerated or not.

(12a) "Proppant" shall mean sand or any natural or man-made material that is used in a hydraulic fracturing treatment to prop open the artificially created or enhanced fractures once the treatment is completed.

(12b) "Surface owner" means the person who holds record title to or has a purchaser's interest in the surface of real property.

(13) "Tender" shall mean a permit or certificate of clearance for the transportation of oil, gas or products, approved and issued or registered under the authority of the Department.

(14) "Waste" in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood in the oil and gas industry. It shall include:
   a. The inefficient, excessive or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which results, or tends to result, in reducing inefficiently the quantity of oil or gas ultimately to be recovered from any pool in this State.
   b. The inefficient storing of oil, and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas.
   c. Abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and unratable withdrawals causing undue drainage between tracts of land.
   d. Producing oil or gas in such manner as to cause unnecessary water channelling or coning.
   e. The operation of any oil well or wells with an inefficient gas-oil ratio.
   f. The drowning with water of any stratum or part thereof capable of producing oil or gas.
   g. Underground waste however caused and whether or not defined.
   h. The creation of unnecessary fire hazards.
   i. The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount which is necessary in the efficient drilling or operation of the well.
   j. Permitting gas produced from a gas well to escape into the air.

(15) "Water supply" shall mean any groundwater or surface water intended or used for human consumption; household purposes; or farm, livestock, or garden purposes. (1945, c. 702, s. 9; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 218(59); 1997-443, s. 11A.119(a); 2011-276, s. 3(a); 2012-143, s. 2(b); 2014-4, s. 4(c); 2015-241, s. 14.30(u).)

§ 113-390. Waste prohibited.

Waste of oil or gas as defined in this law is hereby prohibited. (1945, c. 702, s. 10.)

§ 113-391. Jurisdiction and authority; rules and orders.

(a) The Oil and Gas Commission, created by G.S. 143B-293.1, in conjunction with rule-making authority specifically reserved to the Environmental Management Commission under subsection (a3) of this section, shall establish a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing treatments for that purpose. The program shall be designed to protect public health and safety; protect public and private property; protect and conserve the State's air, water, and other natural resources; promote economic development and expand employment opportunities; and provide for the productive and efficient development of the State's oil and gas resources. To establish the program, the Commission shall adopt rules for all of the following purposes:

(1) Regulation of pre-drilling exploration activities, including seismic and other geophysical and stratigraphic surveys and testing.
(2) Regulation of drilling, operation, casing, plugging, completion, and abandonment of wells.
(3) Prevention of pollution of water supplies by oil, gas, or other fluids used in oil and gas exploration and development.
(4) Protection of the quality of the water, air, soil, or any other environmental resource against injury or damage or impairment.
(5) Regulation of horizontal drilling and hydraulic fracturing treatments for the purpose of oil and gas exploration. Such rules shall, at a minimum, include standards or requirements related to the following:
    a. Information and data to be submitted in association with applications for permits to conduct oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments, which may include submission of hydrogeological investigations and identification of mechanisms to prevent and diagnose sources of groundwater contamination in the area of drilling sites. In formulating these requirements, the Commission shall consider (i) how North Carolina's geology differs from other states where oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments are common and (ii) the routes of possible groundwater contamination resulting from these activities and the potential role of vertical geological structures such as dikes and faults as conduits for groundwater contamination.
    b. Collection of baseline data, including groundwater, surface water, and air quality in areas where oil and gas exploration and development activities are proposed. With regard to rules applicable to baseline data for groundwater and surface water, the Commission shall adopt rules that, at a minimum, establish standards to satisfy the pre-drilling testing requirement established under G.S. 113-421(a), including contaminants for which an operator or developer must test and necessary qualifications for persons conducting such tests.
    c. Appropriate construction standards for oil and gas wells, which shall address the additional pressures of horizontal drilling and hydraulic fracturing treatments. These rules, at a minimum, shall include standards for casing and cementing sufficient to handle highly pressurized injection of hydraulic fracturing fluids into a well for purposes of fracturing bedrock and extraction of gas, and construction standards for other gas production infrastructure, such as storage pits and tanks.
    d. Appropriate siting standards for wells and other gas production infrastructure, such as storage pits and tanks, including appropriate setback requirements and identification of areas, such as floodplains, where oil and gas exploration and production activities should be prohibited. Siting standards adopted shall be consistent with any applicable water quality standards adopted by the Environmental

Management Commission or by local governments pursuant to water quality statutes, including standards for development in water supply watersheds.

e. Limits on water use, including, but not limited to, a requirement that oil and gas operators prepare and have a water and wastewater management plan approved by the Department, which, among other things, limits water withdrawals during times of drought and periods of low flows. Rules adopted shall be (i) developed in light of water supply in the areas of proposed activity, competing water uses in those areas, and expected environmental impacts from such water withdrawals and (ii) consistent with statutes, and rules adopted by the Environmental Management Commission pursuant to those statutes, which govern water quality and management of water resources, including, but not limited to, statutes and rules applicable to water withdrawal registration, interbasin transfer requirements, and water quality standards related to wastewater discharges.

f. Management of wastes produced in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose. Such rules shall address storage, transportation, and disposal of wastes that may contain radioactive materials or wastes that may be toxic or have other hazardous wastes' characteristics that are not otherwise regulated as a hazardous waste by the federal Resource Conservation and Recovery Act (RCRA), such as top-hole water, brines, drilling fluids, additives, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids, and drill cuttings from the drilling, alteration, production, plugging, or other activity associated with oil and gas wells. Wastes generated in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose that constitute hazardous waste under RCRA shall be subject to rules adopted by the Environmental Management Commission to implement RCRA requirements in the State.

g. Prohibitions on use of certain chemicals and constituents in hydraulic fracturing fluids, particularly diesel fuel.

h. Disclosure of chemicals and constituents used in oil and gas exploration, drilling, and production, including hydraulic fracturing fluids, to State regulatory agencies and to local government emergency response officials, and, with the exception of those items constituting trade secrets, as defined in G.S. 66-152(3), and that are designated as confidential or as a trade secret under G.S. 132-1.2, requirements for disclosure of those chemicals and constituents to the public.

i. Installation of appropriate safety devices and development of protocols for response to well blowouts, chemical spills, and other emergencies, including requirements for approved emergency response plans and certified personnel to implement these plans as needed.

j. Measures to mitigate impacts on infrastructure, including damage to roads by truck traffic and heavy equipment, in areas where oil and gas exploration and development activities that use horizontal drilling and hydraulic fracturing technologies are proposed to occur.

k. Notice, record keeping, and reporting.

l. Proper well closure, site reclamation, post-closure monitoring, and financial assurance. Rules for financial assurance shall require that an oil or gas developer or operator establish financial assurance that will ensure that sufficient funds are available for well closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by the Department in response to an incident involving a drilling operation, even if the developer or operator becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(6) Repealed by Session Laws 2014-4, s. 9, effective June 4, 2014.

(7) To require the making of reports showing the location of oil and gas wells and the filing of logs and drilling records.

(8) To prevent "blowouts," "caving," and "seepage," as such terms are generally understood in the oil and gas industry.

(9) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and all storage and transportation equipment and facilities.

(10) To regulate the "shooting," perforating, and chemical treatment of wells.

(11) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substances into producing formations.

(12) To regulate the spacing of wells and to establish drilling units.

(13) To regulate and, if necessary in its judgment for the protection of unique environmental values, to prohibit the location of wells in the interest of protecting the quality of the water, air, soil, or any other environmental resource against injury, damage, or impairment.

(13a) Criteria to set the amount of a bond required pursuant to G.S. 113-421(a3), including, at a minimum, the number of wells proposed at a site, the pre-drilling condition of the property, the amount of acreage that would be impacted by the proposed oil and gas activities, and other factors designed to enable establishment of bonds on a site-by-site basis.

(14) Any other matter the Commission deems necessary for implementation of a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing for that purpose.

(a1) The regulatory program required to be established and the rules required to be adopted pursuant to subsection (a) of this section shall not include a program or rules for the regulation of oil and gas exploration and development in the waters of the Atlantic Ocean and the coastal sounds as defined in G.S. 113A-103.

(a2) In addition to the matters for which the Commission is required to adopt rules pursuant to subsection (a) of this section, the Commission may adopt rules as it deems necessary for any of the following purposes:

(1) To require the operation of wells with efficient gas-oil ratios and to fix such ratios.

(2) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as defined in this Article and rules adopted thereunder.

(3) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.

(4) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.

(a3) The Environmental Management Commission shall adopt rules, after consideration of recommendations from the Oil and Gas Commission, for all of the following purposes:

(1) Stormwater control for sites on which oil and gas exploration and development activities are conducted.

(2) Regulation of toxic air emissions from drilling operations, if it determines that the State's current air toxics program and any federal regulations governing toxic air emissions from drilling operations to be adopted by the State by reference are inadequate to protect public health, safety, welfare, and the environment. In formulating appropriate standards, the Department shall assess emissions from oil and gas exploration and development activities that use horizontal drilling and hydraulic fracturing technologies, including emissions from associated truck traffic, in order to (i) determine the adequacy of the State's current air toxics program to protect landowners who lease their property to drilling operations and (ii) determine the impact on ozone levels in the area in order to determine measures needed to maintain compliance with federal ozone standards.

(a4) The Department shall administer and enforce the provisions of this Article, and rules adopted thereunder, and all other laws relating to the conservation of oil and gas, except for jurisdiction and authority reserved to the Department of Labor and the Oil and Gas Commission, as otherwise provided. The Commission and the Department may issue orders as may be necessary from time to time in the proper administration and enforcement of this Article and rules adopted thereunder.

(a5) Entry of rules in the North Carolina Administrative Code that address the areas identified by subsections (a) and (a3) of this section by July 1, 2015, create a rebuttable presumption that the rules are sufficient to meet the requirements for development of a modern regulatory program pursuant to this section.

(a6) The Commission shall have the authority to develop rules addressing requirements for: permit applications; permit modifications; permit conditions; denial of applications for permits; permit transfers from one person to another; and permit durations, suspensions, revocations, and release.

(b) The Commission and the Department, as appropriate, shall have the authority and it shall be their duty to make such inquiries as may be proper to implement the provisions of this Article. In the exercise of such power the Commission and the Department, as appropriate, shall have the authority to collect data; to make investigations and inspections; to examine properties,

leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, refineries, and means of transportation; to hold hearings; and to provide for the keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce this law.

(b1) In the exercise of their respective authority over oil and gas exploration and development activities, the Commission and the Department, as applicable, shall have access to all data, records, and information related to such activities, including, but not limited to, seismic surveys, stratigraphic testing, geologic cores, proposed well bore trajectories, hydraulic fracturing fluid chemicals and constituents, drilling mud chemistry, and geophysical borehole logs. With the exception of information designated as a trade secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2, the Department shall make any information it receives available to the public. The State Geologist, or the State Geologist's designee, shall serve as the custodian of all data, information, and records received by the Department pursuant to this subsection, including information designated as a trade secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2, and shall ensure that all of the information, including information designated as a trade secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2, is maintained securely as provided in G.S. 132-7.

(c) Repealed by Session Laws 2012-143, s. 2(c), effective August 1, 2012.

(d) The Department of Labor shall develop, adopt, and enforce rules establishing health and safety standards for workers engaged in oil and gas operations in the State, including operations in which hydraulic fracturing treatments are used for that purpose.

(e) The Department shall submit an annual report on its activities conducted pursuant to this Article and rules adopted under it to the Environmental Review Commission, the Joint Legislative Commission on Energy Policy, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division of the General Assembly on or before October 1 of each year. (1945, c. 702, s. 11; 1971, c. 813, ss. 5, 6; 1973, c. 1262, s. 86; 1987, c. 827, s. 111; 1989, c. 727, s. 120; 2012-143, s. 2(c); 2013-365, s. 5(b); 2014-4, ss. 4(c), 7(a), 8(b), 9; 2014-122, s. 11(j); 2015-1, s. 6(a); 2017-57, s. 14.1(qq).)

§ 113-391.1. Trade secret and confidential information determination; protection; retention; disclosure to emergency personnel.

(a) Legislative Findings. – The General Assembly finds that while confidential information must be maintained as such with the utmost care, for the protection of public health, safety, and the environment, the information should be immediately accessible to first responders and medical personnel in the event that the information is deemed necessary to address an emergency.

(b) Determination and Treatment of Confidential Information. – Information obtained by the Commission and the Department pursuant to this Article, and rules adopted thereunder, shall be available to the public except that, upon a showing satisfactory to the Commission by any person that information to which the Commission and Department has access, if made public, would divulge methods or processes entitled to protection as confidential information pursuant to G.S. 132-1.2, the Commission shall consider the information confidential. In accordance with

subsection (b1) of G.S. 113-391, the State Geologist shall serve as the custodian of the confidential information and shall ensure that it is maintained securely as provided in G.S. 132-7. The State Geologist, or the Geologist's designee, shall:

(1) Review confidential information that concerns hydraulic fracturing fluid, as that term is defined in G.S. 113-389, to ensure compliance with all State and federal laws, rules, and regulations concerning prohibited chemicals or constituents, or exceedances of standards for chemicals or constituents. The State Geologist, or the Geologist's designee, shall issue a written certification within five days of completion of the review that the hydraulic fracturing fluids, including chemicals and constituents contained therein, comply with all State and federal laws, rules, and regulations; (ii) transmit the certification to the Mining and Energy Commission and the Director of the Division of Energy, Mining, and Land Resources; and (iii) transmit a copy of the certification electronically to the permittee. Horizontal drilling and hydraulic fracturing treatments shall not commence until this written certification has been issued and transmitted as required by this subsection.

(2) Review, in consultation with the State Health Director, confidential information that concerns hydraulic fracturing fluid, as that term is defined in G.S. 113-389, to advise local health departments of additional parameters that should be included in testing for private drinking water wells in their jurisdictions in compliance with the requirements of G.S. 87-97 and the Private Well Water Education Act enacted by S.L. 2013-122.

(c) Exceptions to Disclosure Prohibitions. – Confidential information obtained by the Commission and the Department pursuant to this Article, and rules adopted thereunder, may be disclosed to any officer, employee, or authorized representative of any federal or State agency if disclosure is necessary to carry out a proper function of the Department or other agency or when relevant in any proceeding under this Article. Confidential information shall be disclosed to the following:

(1) The Division of Emergency Management of the Department of Public Safety. The Division shall maintain this information as confidential except if disclosure is necessary to carry out a proper function of the Division, including for the purposes of emergency planning and emergency response. For purposes of this section, the term "emergency" is defined as provided in G.S. 166A-19.3.

(2) A treating health care provider who determines that a medical emergency exists and that the information is necessary for emergency or first aid treatment. Regardless of the existence of a written statement of need or a confidentiality agreement, the Department shall immediately disclose the confidential information to the treating health care provider upon request. If confidential information is disclosed pursuant to this subdivision, the Department shall notify the owner of the confidential information as soon as practicable, but no later than 24 hours after disclosure. The owner of the confidential information may require execution of a written statement of need and a confidentiality agreement from the treating health care provider as soon as circumstances permit. The confidentiality agreement (i) may restrict the use of the information to the health purposes indicated in a written statement of need; (ii) may provide for appropriate legal remedies in the event of a breach of the agreement,

including stipulation of a reasonable pre-estimate of likely damages; and (iii) may not include requirements for the posting of a penalty bond. The parties are not precluded from pursuing noncontractual remedies to the extent permitted by law.

(3) A Fire Chief, as that term is defined in G.S. 95-174, who determines that an emergency exists and that the information is necessary to address the emergency. Regardless of the existence of a written statement of need or a confidentiality agreement, the Department shall immediately disclose the confidential information to the Fire Chief upon request. If confidential information is disclosed pursuant to this subdivision, the Department shall notify the owner of the confidential information as soon as practicable, but no later than 24 hours after disclosure. The owner of the confidential information may require execution of a written statement of need and a confidentiality agreement from the Fire Chief as soon as circumstances permit. The confidentiality agreement (i) may restrict the use of the information to the emergency purposes indicated in a written statement of need; (ii) may provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and (iii) may not include requirements for the posting of a penalty bond. The parties are not precluded from pursuing noncontractual remedies to the extent permitted by law.

(d) Penalties for Unlawful Disclosure. – Except as provided in subsection (c) of this section or as otherwise provided by law, any person who has access to confidential information pursuant to this section and who knowingly and willfully discloses it to any person not authorized to receive it shall be guilty of a Class 1 misdemeanor and shall be subject to civil action for damages and injunction by the owner of the confidential information, including, without limitation, actions under Article 24 of Chapter 66 of the General Statutes.

(e) Appeal From Commission Decisions Concerning Confidentiality. – Within 10 days of any decision made pursuant to subsection (b) of this section, the Commission shall provide notice to any person who submits information asserted to be confidential (i) that the information is not entitled to confidential treatment and (ii) of any decision to release such information to any person who has requested the information. Notwithstanding the provisions of G.S. 132-9, or procedures for appeal provided under Article 4 of Chapter 150B of the General Statutes, any person who requests information and any person who submits information who is dissatisfied with a decision of the Commission to withhold or release information made pursuant to subsection (b) of this section shall have 30 days after receipt of notification from the Commission to appeal by filing an action in superior court and in accordance with the procedures for a mandatory complex business case set forth in G.S. 7A-45.4. Notwithstanding any other provision of G.S. 7A-45.4, the appeal shall be heard de novo by a judge designated as a Business Court Judge under G.S. 7A-45.3. The information may not be released by the Commission until the earlier of (i) the 30-day period for filing of an appeal has expired without filing of an appeal or (ii) a final judicial determination has been made in an action brought to appeal a decision of the Commission. In addition, the following shall apply to actions brought pursuant to this section:

(1) Such actions shall be set down for immediate hearing.

(2) The burden shall be on the owner of the information to show that the information is entitled to protection as confidential information pursuant to G.S. 132-1.2.

(3) The court shall allow a party seeking disclosure of information who substantially prevails to recover its reasonable attorneys' fees if attributed to the information. The court may not assess attorneys' fees against the Commission or the Department, however, but shall impose such fees on the owner of the information asserting confidentiality.

(4) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess reasonable attorneys' fees against the person or persons instituting the action and award to the prevailing party or parties. (2014-4, s. 8(a); 2014-115, s. 67.)

§ 113-392. Protecting pool owners; drilling units in pools; location of wells; shares in pools.

(a) Whether or not the total production from a pool be limited or prorated, no rule or order of the Commission shall be such in terms or effect:

(1) That it shall be necessary at any time for the producer from, or the owner of, a tract of land in the pool, in order that he may obtain such tract's just and equitable share of the production of such pool, as such share is set forth in this section, to drill and operate any well or wells on such tract in addition to such well or wells as can produce without waste such share, or

(2) As to occasion net drainage from a tract unless there be drilled and operated upon such tract a well or wells in addition to such well or wells thereon as can produce without waste such tract's just and equitable share, as set forth in this section, of the production of such pool.

(b) For the prevention of waste and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, the Commission shall, after a hearing, establish a drilling unit or units for each pool. The Commission may establish drainage units of uniform size for the entire pool or may, if the facts so justify, divide into zones any pool, establish a drainage unit for each zone, which unit may differ in size from that established in any other zone; and the Commission may from time to time, if the facts so justify, change the size of the unit established for the entire pool or for any zone or zones, or part thereof, establishing new zones and units if the facts justify their establishment.

(c) Repealed by Session Laws 2014-4, s. 10, effective June 4, 2014.

(d) Subject to the reasonable requirements for prevention of waste, a producer's just and equitable share of the oil and gas in the pool (also sometimes referred to as a tract's just and equitable share) is that part of the authorized production for the pool (whether it be the total which could be produced without any restriction on the amount of production, or whether it be an amount less than that which the pool could produce if no restriction on the amount were imposed) which is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of his tract in the pool bears to the recoverable oil and gas in the total developed area of the pool, insofar as these amounts can be ascertained practically; and to that end, the rules, permits and orders of the Commission shall be such as will prevent or minimize reasonably avoidable net drainage from each developed unit (that is, drainage which is not equalized by counter-drainage), and will give to each producer the opportunity to use his just and equitable share of the reservoir

energy. (1945, c. 702, s. 12; 1973, c. 1262, s. 86; 1987, c. 827, s. 112; 2012-143, s. 2(d); 2014-4, s. 10.)

§ 113-393. Development of lands as drilling unit by agreement or order of Commission.

(a) Integration of Interests and Shares in Drilling Unit. – When two or more separately owned tracts of land are embraced within an established drilling unit, the owners thereof may agree validly to integrate their interests and to develop their lands as a drilling unit. Where, however, such owners have not agreed to integrate their interests, the Commission shall, for the prevention of waste or to avoid drilling of unnecessary wells, require such owners to do so and to develop their lands as a drilling unit. All orders requiring such integration shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract the opportunity to recover or receive his just and equitable share of the oil and gas in the pool without unnecessary expense, and will prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage. The portion of the production allocated to the owner of each tract included in a drilling unit formed by an integration order shall, when produced, be considered as if it had been produced from such tract by a well drilled thereon.

In the event such integration is required, and provided also that after due notice to all the owners of tracts within such drilling unit of the creation of such drilling unit, and provided further that the Commission has received no protest thereto, or request for hearing thereon, whether or not 10 days have elapsed after notice has been given of the creation of the drilling unit, the operator designated by the Commission to develop and operate the integrated unit shall have the right to charge to each other interested owner the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision, and the operator shall have the right to receive the first production from the well drilled by him thereon, which otherwise would be delivered or paid to the other parties jointly interested in the drilling of the well, so that the amount due by each of them for his shares of the expense of drilling, equipping, and operating the well may be paid to the operator of the well out of production; with the value of the production calculated at the market price in the field at the time such production is received by the operator or placed to his credit. After being reimbursed for the actual expenditures for drilling and equipping and operating expenses incurred during the drilling operations and until the operator is reimbursed, the operator shall thereafter pay to the owner of each tract within the pool his ratable share of the production calculated at the market price in the field at the time of such production less the reasonable expense of operating the well. In the event of any dispute relative to such costs, the Commission shall determine the proper costs.

(b) When Each Owner May Drill. – Should the owners of separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the Commission is without authority to require integration as provided for in subsection (a) of this section, then, subject to all other applicable provisions of this law, the owner of each tract embraced within the drilling unit may drill on his tract, but the allowable production from each tract shall be such proportion of the allowable for the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

(c) Cooperative Development Not in Restraint of Trade. – Agreements made in the interests of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same oil or gas pool, or in any area that appears from geological or other data to be underlaid by a common accumulation of oil or gas,

or both, or between and among such owners or operators, or both, and royalty owners therein, of a pool or area, or any part thereof, as a unit for establishing and carrying out a plan for the cooperative development and operation thereof, when such agreements are approved by the Commission, are hereby authorized and shall not be held or construed to violate any of the statutes of this State relating to trusts, monopolies, or contracts and combinations in restraining of trade.

(d) Variation from Vertical. – Whenever the Department fixes the location of any well or wells on the surface, the point at which the maximum penetration of such wells into the producing formation is reached shall not unreasonably vary from the vertical drawn from the center of the hole at the surface, provided, that the Commission shall prescribe rules and the Department shall prescribe orders governing the reasonableness of such variation. This subsection shall not apply to wells drilled for the purpose of exploration or development of natural gas through use of horizontal drilling in conjunction with hydraulic fracturing treatments. (1945, c. 702, s. 13; 1973, c. 1262, s. 86; 1987, c. 827, s. 112; 2012-143, s. 3(a).)

§ 113-394. Limitations on production; allocating and prorating "allowables."

(a) The Commission may limit the total amount of oil, including condensate, which may be produced in the State by fixing an amount which shall be designated "allowable" for the State. The Commission may then allocate or distribute the "allowable" for the State among the pools on a reasonable basis and in such manner as to avoid undue discrimination, and so that waste will be prevented. In allocating the "allowable" for the State, and in fixing "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such hydrocarbons, the Commission may take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil, gas and condensate, and may formulate rules setting forth standards or a program for the distribution of the "allowable" for the State, and distribute the "allowable" for the State in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or programs shall be applied to such pools and areas so that as far as practicable a uniform program will be followed; provided, however, the Commission shall allow the production of a sufficient amount of natural gas from any pool to supply adequately the reasonable market demand for such gas for light and fuel purposes if such production can be obtained without waste, and the condensate "allowable" for such pool shall not be less than the total amount of condensate produced or obtained in connection with the production of the gas "allowable" for light and fuel purposes, and provided further that, if the amount allocated to pool as its share of the "allowable" for the State is in excess of the amount which the pool should produce to prevent waste, then the Commission shall fix the "allowable" for the pool so that waste will be prevented.

In allocating "allowables" to pools, the Commission shall not be bound by nominations or desires of purchasers to purchase oil from particular fields or areas, and the Commission shall allocate the "allowable" for the State in such manner as will prevent undue discrimination against any pool or area in favor of another or others which would result from selective buying or nominating by purchasers of oil, as such term "selective buying or nominating" is understood in the oil business.

(b) Repealed by Session Laws 2013-365, s. 4, effective July 29, 2013.

(c) Whenever the Commission limits the total amount of oil or gas which may be produced in any pool in this State to an amount less than that which the pool could produce if no restrictions were imposed (which limitation may be imposed either incidental to, or without, a limitation of the total amount of oil or gas which may be produced in the State), the Commission shall prorate or

distribute the "allowable" production among the producers in the pool on a reasonable basis, and so that each producer will have the opportunity to produce or receive his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), subject to the reasonable necessities for the prevention of waste.

(d) Whenever the Commission limits the total amount of gas which may be produced from a pool, the Commission shall then allocate or distribute the allowable production among the developed areas in the pool on a reasonable basis, so that each producer will have the opportunity to produce his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), whether the restriction for the pool as a whole is accomplished by order or by the automatic operation of the prohibitory provisions of this law. As far as applicable, the provisions of subsection (a) of this section shall be followed in allocating any "allowable" of gas for the State.

(e) After the effective date of any rule or order of the Commission fixing the "allowable" production of oil or gas, or both, or condensate, no person shall produce from any well, lease, or property more than the "allowable" production which is fixed, nor shall such amount be produced in a different manner than that which may be authorized. (1945, c. 702, s. 14; 1973, c. 1262, s. 86; 1975, c. 19, ss. 37, 38; 1987, c. 827, s. 112; 2012-143, s. 2(e); 2013-365, s. 4.)

§ 113-395. Permits, fees, and notice required for oil and gas activities.

(a) Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall submit an application for a permit to the Department upon such form as the Department may prescribe and shall pay a fee of three thousand dollars ($3,000) for the first well to be drilled on a pad and fifteen hundred dollars ($1,500) for each additional well to be drilled on the same pad. The drilling of any well is prohibited unless the Department has issued a permit for the activity.

(b) Any person desiring to use hydraulic fracturing treatments in conjunction with oil and gas operations or activities shall submit an application for a permit to the Department upon such form as the Department may prescribe. The use of hydraulic fracturing treatments is prohibited unless the Department has issued a permit for the activity.

(c) Each abandoned well and each dry hole shall be plugged promptly in the manner and within the time required by rules prescribed by the Commission, and the owner of such well shall give notice, upon such form as the Commission may prescribe, of the abandonment of each dry hole and of the owner's intention to abandon, and shall pay a fee of four hundred fifty dollars ($450.00). No well shall be abandoned until such notice has been given and such fee has been paid. (1945, c. 702, s. 15; 1973, c. 1262, s. 86; 1987, c. 827, s. 113; 2011-276, s. 2; 2012-143, s. 3(c); 2014-4, s. 11.)

§ 113-395.1. Miscellaneous permit requirements.

The Department shall require that all natural gas compressor stations associated with an oil and gas drilling operation be located inside a baffled building. (2014-4, s. 15(a).)

§ 113-395.2. Subsurface injection of waste prohibited.

(a) Disposal of wastes produced in connection with oil and gas exploration, development, and production, and use of horizontal drilling and hydraulic fracturing treatments for that purpose by injection to subsurface or groundwaters of the State by means of wells is prohibited in accordance with G.S. 143-214.2.

(b) Notwithstanding G.S. 143-214.2, a violation of subsection (a) of this section shall constitute a Class 1 misdemeanor. (2014-4, s. 15(a).)

§ 113-395.3. Environmental compliance review requirements for applicants and permit holders.

(a) For purposes of this section, "applicant" means an applicant for a permit and a permit holder and includes the owner or operator of the facility, and if the owner or operator is a business entity, applicant also includes (i) the parent, subsidiary, or other affiliate of the applicant; (ii) a partner, officer, director, member, or manager of the business entity, parent, subsidiary, or other affiliate of the applicant; and (iii) any person with a direct or indirect interest in the applicant, other than a minority shareholder of a publicly traded corporation who has no involvement in management or control of the corporation or any of its parents, subsidiaries, or affiliates.

(b) The Department shall conduct an environmental compliance review of each applicant for a new permit under this Article. The environmental compliance review shall evaluate the environmental compliance history of the applicant for a period of five years prior to the date of the application and may cover a longer period at the discretion of the Department. The environmental compliance review of an applicant may include consideration of the environmental compliance history of the parents, subsidiaries, or other affiliates of an applicant or parent that is a business entity, including any business entity or joint venturer with a direct or indirect interest in the applicant, and other facilities owned or operated by any of them. The Department shall determine the scope of the review of the environmental compliance history of the applicant, parents, subsidiaries, or other affiliates of the applicant or parent, including any business entity or joint venturer with a direct or indirect interest in the applicant, and of other facilities owned or operated by any of them. An applicant for a permit shall provide environmental compliance history information for each facility, business entity, joint venture, or other undertaking in which any of the persons listed in this subsection is or has been an owner, operator, officer, director, manager, member, or partner, or in which any of the persons listed in this subsection has had a direct or indirect interest as requested by the Department.

(c) The Department shall determine the extent to which the applicant, or a parent, subsidiary, or other affiliate of the applicant or parent, or a joint venturer with a direct or indirect interest in the applicant, has substantially complied with the requirements applicable to any activity in which any of these entities previously engaged and has substantially complied with federal, North Carolina, and other states' laws, regulations, and rules for the protection of the environment. The Department may deny an application for a permit if the applicant has a history of significant or repeated violations of statutes, rules, orders, or permit terms or conditions for the protection of the environment or for the conservation of natural resources as evidenced by civil penalty assessments, administrative or judicial compliance orders, or criminal penalties.

(d) A permit holder shall notify the Department of any significant change in its environmental compliance history or any significant change in the (i) identity of any person or structure of the business entity that holds the permit for the facility; (ii) identity of any person or structure of the business entity that owns or operates the facility; or (iii) assets of the permit holder, owner, or operator of the facility. The permit holder shall notify the Department within 30 days of a significant change. A change shall be considered significant if it would result in a change in the identity of the permit holder, owner, or operator for purposes of environmental compliance review. Based on its review of the changes, the Department may modify or revoke a permit, or require issuance of a new permit. (2014-4, s. 15(a).)

§ 113-395.4. Seismic or geophysical data collection.

(a) Notwithstanding any other provision of law, no liability for trespass shall arise from activities conducted for the purpose of seismic or geophysical data collection. Provided, however, (i) persons conducting seismic and geophysical data collection may only conduct such activity by undershooting from an off-site location and without physical entry to private land, unless the landowner's consent for such activity is obtained in writing and (ii) persons conducting seismic or geophysical data collection shall be civilly liable for any physical or property damage determined to be a direct result of their seismic or geophysical data collection activities, whether or not the seismic or geophysical data collection was conducted by undershooting the land at an off-site location or by physical entry to land as permitted by the landowner.

(b) Conduct of seismic or geophysical data collection activities through physical entry to land without a landowner's written consent shall constitute a Class 1 misdemeanor. (2014-4, s. 15(a).)

§ 113-396. Wells to be kept under control.

In order to protect further the natural gas fields and oil fields in this State, it is hereby declared to be unlawful for any person to permit negligently any gas or oil well to go wild or to get out of control. The owner of any such well shall, after 24 hours' written notice by the Department given to him or to the person in possession of such well, make reasonable effort to control such well.

In the event of the failure of the owner of such well within 24 hours after service of the notice above provided for, to control the same, if such can be done within the period, or to begin in good faith upon service of such notice, operations to control such well, or upon failure to prosecute diligently such operations, then the Department shall have the right to take charge of the work of controlling such well, and it shall have the right to proceed, through its own agents or by contract with a responsible contractor, to control the well or otherwise to prevent the escape or loss of gas or oil from such well all at the reasonable expense of the owner of the well. In order to secure to the Department the payment of the reasonable cost and expense of controlling or plugging such well, the Department shall retain the possession of the same and shall be entitled to receive and retain the rents, revenues and income therefrom until the costs and expenses incurred by the Department shall be repaid. When all such costs and expenses have been repaid, the Department shall restore possession of such well to the owner; provided, that in the event the income received by the Department shall not be sufficient to reimburse the Department as provided for in this section, the Department shall have a lien or privilege upon all of the property of the owner of such well, except such as is exempt by law, and the Department shall proceed to enforce such lien or privilege by suit brought in any court of competent jurisdiction, the same as any other civil action, and the judgment so obtained shall be executed in the same manner now provided by law for execution of judgments. Any excess over the amount due the Department which the property seized and sold may bring, after payment of court costs, shall be paid over to the owner of such well. (1945, c. 702, s. 16; 1973, c. 1262, s. 86.)

§ 113-397. Hearing in emergency.

If an emergency situation, as defined by the Department, arises under this Article, the Department may conduct a hearing to determine the appropriate course of action after giving any notice it considers practicable. Chapter 150B of the General Statutes does not apply to a hearing under this section. The rules of evidence apply in a hearing under this section. (1945, c. 702, s. 17; 1973, c. 1262, s. 86; 1987, c. 827, s. 114.)

§ 113-398. Procedure and powers in hearings by Department.

In the exercise and enforcement of its jurisdiction, the said Department is authorized to summon witnesses, administer oaths, make ancillary orders and require the production of records and books for the purpose of examination at any hearing or investigation conducted by it. In connection with the exercise and enforcement of its jurisdiction, the Department shall also have the right and authority to certify as for contempt, to the court of any county having jurisdiction, violations by any person of any of the provisions of this Article or of the rules or orders of the Department, and if it be found by said court that such person has knowingly and willfully violated same, then such person shall be punished as for contempt in the same manner and to the same extent and with like effect as if said contempt had been of an order, judgment or decree of the court to which said certification is made. (1945, c. 702, s. 18; 1973, c. 1262, s. 86; 1987, c. 827, s. 115.)

§ 113-399. Suits by Department.

The Department may bring an action in any court of competent jurisdiction in the State to enforce, by injunction or another remedy, an order issued or rule adopted by the Department under this Article. The court may enter any judgment or order necessary to enforce an order issued or rule adopted by the Department under this Article. (1945, c. 702, s. 19; 1973, c. 1262, s. 86; 1987, c. 827, s. 116.)

§ 113-400. Assessing costs of hearings.

The said Department is hereby authorized and directed to tax and assess against the parties involved in any hearing the costs incurred therein. (1945, c. 702, s. 20; 1973, c. 1262, s. 86.)

§ 113-401. Party to hearings; review.

The term "party" as used in this Article shall include any person, firm, corporation or association. In proceedings for review of an order or decision of said Department, the Department shall have all rights and privileges granted by this Article to any other party to such proceedings. (1945, c. 702, s. 21; 1973, c. 1262, s. 86.)

§ 113-402. Administrative review.

A party who is dissatisfied with a decision or order of the Department under this Article may obtain administrative review of the decision by filing a petition for a contested case hearing under G.S. 150B-23 within 10 days after the decision or order is made. (1945, c. 702, s. 22; 1973, c. 1262, s. 86; 1987, c. 827, s. 117.)

§ 113-403. Judicial review.

Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision or order made under this Article. (1945, c. 702, s. 23; 1973, c. 1262, s. 86; 1987, c. 827, s. 118.)

§§ 113-404 through 113-405: Repealed by Session Laws 1987, c. 827, s. 119.

§ 113-406. Effect of pendency of judicial review; stay of proceedings.

The filing or pendency of the application for judicial review provided for in this Article shall not in itself stay or suspend the operation of any order or decision of the Department, but, during the pendency of such proceeding the court, in its discretion, may stay or suspend, in whole or in part, the operation of the order or decision of the Department. No order so staying or suspending an

order or decision of the Department shall be made by any court of this State otherwise than on five days' notice and, after a hearing, and if a stay or suspension is allowed the order granting the same shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage. (1945, c. 702, s. 26; 1973, c. 1262, s. 86; 1987, c. 827, s. 120.)

§ 113-407. Stay bond.

In case the order or decision of the Department is stayed or suspended, the order or judgment of the court shall not become effective until a bond shall have been executed and filed with and approved by the court, payable to the Department, sufficient in amount and security to secure the prompt payment, by the party petitioning for the stay, of all damages caused by the delay in the enforcement of the order or decision of the Department. (1945, c. 702, s. 27; 1973, c. 1262, s. 86.)

§ 113-408. Enjoining violation of laws and rules; service of process; application for drilling well to include residence address of applicant.

Whenever it shall appear that any person is violating, or threatening to violate, any statute of this State with respect to the conservation of oil or gas, or both, or any provision of this law, or any rule or order made thereunder by any act done in the operation of any well producing oil or gas, or by omitting any act required to be done thereunder, the Department, through the Attorney General, may bring suit against such person in the superior court in the county in which the well in question is located, to restrain such person or persons from continuing such violation or from carrying out the threat of violation. In such suit the Department may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil, illegal gas or illegal product, and any or all such commodities may be ordered to be impounded or placed under the control of an agent appointed by the court if, in the judgment of the court, such action is advisable.

If any such defendant cannot be personally served with summons in that county, personal jurisdiction of that defendant in such suit may be obtained by service made on any employee or agent of that defendant working on or about the oil or gas well involved in such suit, and by the Department mailing a copy of the complaint in the action to the defendant at the address of the defendant then recorded with the director of production and conservation.

Each application for the drilling of a well in search of oil or gas in this State shall include the address of the residence of the applicant or each applicant, which address shall be the address of each person involved in accordance with the records of the director of production and conservation, until such address is changed on the records of the Department after written request. (1945, c. 702, s. 28; 1973, c. 1262, s. 86; 1987, c. 827, s. 121.)

§ 113-409. Punishment for making false entries, etc.

Any person who, for the purpose of evading this law, or of evading any rule or order made thereunder, shall intentionally make or cause to be made any false entry or statement of fact in any report required to be made by this law or by any rule or order made hereunder; or who, for such purpose, shall make or cause to be made any false entry in any account, record, or memorandum kept by any person in connection with the provisions of this law or of any rule or order made thereunder; or who, for such purpose, shall omit to make, or cause to be omitted, full, true and correct entries in such accounts, records, or memoranda, of all facts and transactions pertaining to

the interest or activities in the petroleum industry of such person as may be required by the Department under authority given in this law or by any rule or order made hereunder; or who, for such purpose shall remove out of the jurisdiction of the State, or who shall mutilate, alter, or by any other means falsify, any book, record, or other paper, pertaining to the transactions regulated by this law, or by any rule or order made hereunder, shall be deemed guilty of a Class 2 misdemeanor. (1945, c. 702, s. 29; 1973, c. 1262, s. 86; 1987, c. 827, s. 122; 1993, c. 539, s. 871; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 113-410. Penalties for other violations.

(a) Any person who fails to secure a permit prior to drilling a well or using hydraulic fracturing treatments, or who knowingly and willfully violates any provision of this Article, or any rule or order of the Commission or the Department made hereunder, shall, in the event a penalty for such violation is not otherwise provided for herein, be subject to a penalty of not to exceed twenty-five thousand dollars ($25,000) a day for each and every day of such violation, and for each and every act of violation, such penalty to be recovered in a suit in the superior court of the county where the defendant resides, or in the county of the residence of any defendant if there be more than one defendant, or in the superior court of the county where the violation took place. The place of suit shall be selected by the Department, and such suit, by direction of the Department, shall be instituted and conducted in the name of the Department by the Attorney General. The payment of any penalty as provided for herein shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product, nor shall such payment have the effect of authorizing the sale or purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of such illegal oil, illegal gas or illegal product, but, to the contrary, penalty shall be imposed for each prohibited transaction relating to such illegal oil, illegal gas or illegal product.

(b) Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this State relating to the conservation of oil or gas, or the violation of any provisions of this law, or any rule or order made thereunder, shall be subject to the same penalties as prescribed in subsection (a) of this section for the violation by such other person.

(c) In determining the amount of a penalty under this section, the Department shall consider all of the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
(2) The duration and gravity of the violation.
(3) The effect on ground or surface water quantity or quality or on air quality.
(4) The cost of rectifying the damage.
(5) The amount of money the violator saved by noncompliance.
(6) Whether the violation was committed willfully or intentionally.
(7) The prior record of the violator in complying or failing to comply with this Article or a rule adopted pursuant to this Article.
(8) The cost to the State of the enforcement procedures.

(d) If any civil penalty has not been paid within 60 days after notice of assessment has been served on the violator or within 30 days after service of the final decision by the administrative law judge in accordance with G.S. 150B-34, a final decision by the Committee on Civil Penalty Remissions established under G.S. 143B-293.6, or a court order, whichever is later, the Secretary or the Secretary's designee shall request the Attorney General to institute a civil action in the

superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the civil penalty.

(e) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1945, c. 702, s. 30; 1973, c. 1262, s. 86; 1987, c. 827, s. 122; 1998-215, s. 50; 2012-143, s. 2(f).)

§ 113-411. Dealing in or handling of illegal oil, gas or product prohibited.

(a) The sale, purchase or acquisition, or the transportation, refining, processing or handling in any other way of illegal oil, illegal gas or illegal product is hereby prohibited. All persons purchasing any petroleum product must first be licensed to do so by the Department.

(b) Unless and until the Department provides for certificates of clearance or tenders, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale, purchase or acquisition, or transportation, refining, processing or handling in any other way, involves illegal oil, illegal gas or illegal product, no penalty shall be imposed for the sale, purchase or acquisition, or the transportation, refining, processing or handling in any other way of illegal oil, illegal gas or illegal product, except under circumstances hereinafter stated. Penalties shall be imposed for the commission of each transaction prohibited in this section when the person committing the same knows that illegal oil, illegal gas or illegal product is involved in such transaction, or when such person could have known or determined such fact by the exercise of reasonable diligence or from facts within his knowledge. However, regardless of lack of actual notice or knowledge, penalties as provided in this law shall apply to any sale, purchase or acquisition, and to the transportation, refining, processing or handling in any other way, of illegal oil, illegal gas or illegal product, where administrative provision is made for identifying the character of the commodity as to its legality. It shall likewise be a violation for which penalties shall be imposed for any person to sell, purchase or acquire, or to transport, refine, process or handle in any other way any oil, gas or any product without complying with any rule or order of the Department relating thereto. (1945, c. 702, s. 31; 1973, c. 1262, s. 86; 1987, c. 827, s. 122.)

§ 113-412. Seizure and sale of contraband oil, gas and product.

Apart from, and in addition to, any other remedy or procedure which may be available to the Department, or any penalty which may be sought against or imposed upon any person with respect to violations relating to illegal oil, illegal gas, or illegal product, all illegal oil, illegal gas and illegal product shall, except under such circumstances as are stated herein, be contraband and shall be seized and sold. Such sale shall not take place unless the court shall find, in the proceeding provided for in this paragraph, that the commodity involved is contraband. Whenever the Department believes that illegal oil, illegal gas or illegal product is subject to seizure and sale, as provided herein, it shall, through the Attorney General, have issued a warrant of attachment and bring a civil action in rem for that purpose in the superior court of the county where the commodity is found, or the action may be maintained in connection with any suit or cross bill for injunction or for penalty relating to any prohibited transaction involving such illegal oil, illegal gas or illegal product. Any interested person who may show himself to be adversely affected by any such seizure and sale shall have the right to intervene in such suit to protect his rights.

The action referred to above shall be strictly in rem and shall proceed in the name of the State as plaintiff against the illegal oil, illegal gas or illegal product mentioned in the complaint, as defendant, and no bond or bonds shall be required of the plaintiff in connection therewith. Upon the

filing of the complaint, the clerk of the court shall issue a summons directed to the sheriff of the county, or to such other officer or person as the court may authorize to serve process, requiring him to summon any and all persons (without undertaking to name them) who may be interested in the illegal oil, illegal gas, or illegal product mentioned in the complaint to appear and answer within 30 days after the issuance and service of such summons. The summons shall contain the style and number of the suit and a very brief statement of the nature of the cause of action. It shall be served by posting one copy thereof at the courthouse door of the county where the commodity involved in the suit is alleged to be located and by posting another copy thereof near the place where the commodity is alleged to be located. Copy of such summons shall be posted at least five days before the return day stated therein, and the posting of such copy shall constitute constructive possession of such commodity by the State. A copy of the summons shall also be published once each week for four weeks in some newspaper published in the county where the suit is pending and having a bona fide circulation therein. No judgment shall be pronounced by any court condemning such commodity as contraband until after the lapse of five days from the last publication of said summons. Proof of service of said summons, and the manner thereof, shall be as provided by general law.

Where it appears by a verified pleading on the part of the plaintiff, or by affidavit, or affidavits, or by oral testimony, that grounds for the seizure and sale exist, the clerk, in addition to the summons or warning order, shall issue a warrant of attachment, which shall be signed by the clerk and bear the seal of the court. Such warrant of attachment shall specifically describe the illegal oil, illegal gas or illegal product, so that the same may be identified with reasonable certainty. It shall direct the sheriff to whom it is addressed to take into his custody, actual or constructive, the illegal oil, illegal gas or illegal product, described therein, and to hold the same subject to the orders of the court. Said warrant of attachment shall be executed as a writ of attachment is executed. No bond shall be required before the issuance of such warrant of attachment, and the sheriff shall be responsible upon his official bond for the proper execution thereof.

In a proper case, the court may direct the sheriff to deliver the custody of any illegal oil, illegal gas or illegal product seized by him under a warrant of attachment, to a commissioner to be appointed by the court, which commissioner shall act as the agent of the court and shall give bond with such approved surety as the court may direct, conditioned that he will faithfully conserve such illegal oil, illegal gas or illegal product, as may come into his custody and possession in accordance with the orders of the court; provided, that the court may in its discretion appoint any member of the Department or any agent of the Department as such commissioner of the court.

Sales of illegal oil, illegal gas or illegal product seized under the authority of this law, and notices of such sales, shall be in accordance with the laws of this State relating to the sale and disposition of attached property; provided, however, that where the property is in custody of a commissioner of the court, the sale shall be held by said commissioner and not by the sheriff. For his services hereunder, such commissioner shall receive a reasonable fee to be paid out of the proceeds of the sale or sales to be fixed by the court ordering such sale.

The court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time. Title to the amount sold shall pass as of the date of the law which is found by the court to make the commodity contraband. The judgment shall provide for the clear proceeds of the sales to be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The amount sold shall be treated as legal oil, legal gas or legal product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws, rules, and orders with respect to further sale or purchase or

acquisition, and with respect to the transportation, refining, processing, or handling in any other way, of the commodity purchased.

Nothing in this section shall deny or abridge any cause of action a royalty owner, or a lienholder, or any other claimant, may have, because of the forfeiture of the illegal oil, illegal gas, or illegal product, against the person whose act resulted in such forfeiture. No illegal oil, illegal gas or illegal product shall be sold for less than the average market value at the time of sale of similar products of like grade and character. (1945, c. 702, s. 32; 1973, c. 1262, s. 86; 1987, c. 827, s. 123; 1998-215, s. 51.)

§ 113-413: Repealed by Session Laws 1987, c. 827, s. 124.

§ 113-414. Filing list of renewed leases in office of register of deeds.

On December 31 of each year, or within 10 days thereafter, every person, firm or corporation holding petroleum leases shall file in the office of the register of deeds of the county within which the land covered by such leases is located, a list showing the leases which have been renewed for the ensuing year. (1945, c. 702, s. 34.)

§ 113-415. Conflicting laws.

No provision of this Article shall be construed to repeal, amend, abridge or otherwise affect the authority and responsibility (i) vested in the Environmental Management Commission by Article 7 of Chapter 87 of the General Statutes, pertaining to the location, construction, repair, operation and abandonment of wells; (ii) vested in the Environmental Management Commission related to the control of water and air pollution as provided in Articles 21 and 21A of Chapter 143 of the General Statutes; (iii) vested in the Department and the Commission for Public Health by Article 10 of Chapter 130A of the General Statutes pertaining to public water-supply requirements; or (iv) vested in the Environmental Management Commission related to the management of solid and hazardous waste as provided in Article 9 of Chapter 130A of the General Statutes. (1971, c. 813, s. 7; 1973, c. 476, s. 128; c. 1262, s. 23; 1989, c. 727, s. 121; 2007-182, s. 2; 2012-143, s. 2(g); 2014-122, s. 11(k); 2015-1, s. 3.7.)

§ 113-415.1. Local ordinances regulating oil and gas exploration, development, and production activities invalid; petition to preempt local ordinance.

(a) It is the intent of the General Assembly to maintain a uniform system for the management of oil and gas exploration, development, and production activities, and the use of horizontal drilling and hydraulic fracturing for that purpose, and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of oil and gas exploration, development, and production activities by means of ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, including, but not limited to, those imposing taxes, fees, or charges or regulating health, environment, or land use, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities that regulate or have the effect of regulating oil and gas exploration, development, and production activities within the jurisdiction of a local government are invalidated and unenforceable, to the extent necessary to effectuate the purposes of this Part, that do the following:

(1) Place any restriction or condition not placed by this Article upon oil and gas exploration, development, and production activities and use of horizontal drilling or hydraulic fracturing for that purpose within any county, city, or other political subdivision.

(2), (3) Repealed by Session Laws 2015-264, s. 56.2(a), effective retroactively to June 4, 2014.

(4) In any manner are in conflict or inconsistent with the provisions of this Article.

(b), (c) Repealed by Session Laws 2015-264, s. 56.2(a), effective retroactively to June 4, 2014.

(c1) If a local zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, and oil and gas exploration, development, and production activities would be regulated under the ordinance of general applicability, the operator of the proposed activities may petition the Oil and Gas Commission to review the matter. After receipt of a petition, the Commission shall hold a hearing in accordance with the procedures in subsection (d) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the regulation of oil and gas exploration, development, and production activities.

(d) When a petition described in subsection (c1) of this section has been filed with the Oil and Gas Commission, the Commission shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within 60 days after receipt of the petition by the Commission. The Commission shall give notice of the public hearing by both of the following means:

(1) Publication in a newspaper or newspapers having general circulation in the county or counties where the activities are to be conducted, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing.

(2) First-class mail to persons who have requested notice. The Commission shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Notice by mail shall be complete upon deposit of a copy of the notice in a postage-paid wrapper addressed to the person to be notified at the address that appears on the mailing list maintained by the Commission, in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(e) Any interested person may appear before the Oil and Gas Commission at the hearing to offer testimony. In addition to testimony before the Commission, any interested person may submit written evidence to the Commission for the Commission's consideration. At least 20 days shall be allowed for receipt of written comment following the hearing.

(f) A local zoning or land-use ordinance is presumed to be valid and enforceable to the extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, unless the Oil and Gas Commission makes a finding of fact to the contrary. The Commission shall determine whether or to what extent to preempt local ordinances so as to allow for the establishment and operation of the facility no later than 60 days after conclusion of the hearing. The Commission shall preempt a local ordinance only if the Commission makes all of the following findings:

(1) That there is a local ordinance that would regulate oil and gas exploration, development, and production activities, or use of horizontal drilling or hydraulic fracturing for that purpose.
(2) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance.
(3) That local citizens and elected officials have had adequate opportunity to participate in the permitting process.
(4) That the oil and gas exploration, development, and production activities, and use of horizontal drilling or hydraulic fracturing for that purpose, will not pose an unreasonable health or environmental risk to the surrounding locality and that the operator has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with applicable local ordinances.

(g) If the Oil and Gas Commission does not make all of the findings under subsection (f) of this section, the Commission shall not preempt the challenged local ordinance. The Commission's decision shall be in writing and shall identify the evidence submitted to the Commission plus any additional evidence used in arriving at the decision.

(h) The decision of the Oil and Gas Commission shall be final unless a party to the action files a written appeal under Article 4 of Chapter 150B of the General Statutes, as modified by this section, within 30 days of the date of the decision. The record on appeal shall consist of all materials and information submitted to or considered by the Commission, the Commission's written decision, a complete transcript of the hearing, all written material presented to the Commission regarding the location of the oil and gas exploration, development, and production activities, the specific findings required by subsection (f) of this section, and any minority positions on the specific findings required by subsection (f) of this section. The scope of judicial review shall be as set forth in G.S. 150B-51, except as this subsection provides regarding the record on appeal.

(i) If the court reverses or modifies the decision of the Oil and Gas Commission, the judge shall set out in writing, which writing shall become part of the record, the reasons for the reversal or modification.

(j) In computing any period of time prescribed or allowed by this procedure, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply. (2014-4, s. 14; 2015-264, s. 56.2(a).)

§§ 113-416 through 113-419. Repealed by Session Laws 1959, c. 779, s. 3.

Part 3. Landowner Protection.

§ 113-420. Notice and entry to property.

(a) Notice Required for Activities That Do Not Disturb Surface of Property to Surface Owner. – If an oil or gas developer or operator is not the surface owner of the property on which oil and gas operations are to occur, before entering the property for oil or gas operations that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil or gas drilling operations, the developer or operator shall give written notice to the surface owner at least 14 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The requirements of this

subsection may not be waived by agreement of the parties. The notice, at a minimum, shall include all of the following:

(1) The identity of person(s) requesting entry upon the property.
(2) The purpose for entry on the property.
(3) The dates, times, and location on which entry to the property will occur, including the estimated number of entries.

(b) Notice Required for Land-Disturbing Activities to Surface Owner. – If an oil or gas developer or operator is not the surface owner of the property on which oil or gas operations are to occur, before entering the property for oil or gas operations that disturb the surface, the developer or operator shall give written notice to the surface owner at least 30 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The notice, at a minimum, shall include all of the following:

(1) A description of the exploration or development plan, including, but not limited to (i) the proposed locations of any roads, drill pads, pipeline routes, and other alterations to the surface estate and (ii) the proposed date on or after which the proposed alterations will begin.
(2) An offer of the oil and gas developer or operator to consult with the surface owner to review and discuss the location of the proposed alterations.
(3) The name, address, telephone number, and title of a contact person employed by or representing the oil or gas developer or operator who the surface owner may contact following the receipt of notice concerning the location of the proposed alterations.

(b1) Persons Entering Land; Identification Required; Presumption of Proper Protection While on Surface Owners' Property. – Persons who enter land on behalf of an oil or gas developer or operator for oil and gas operations shall carry on their person identification sufficient to identify themselves and their employer or principal and shall present the identification to the surface owner upon request. Entry upon land by such a person creates a rebuttable presumption that the surface owner properly protected the person against personal injury or property damage while the person was on the land.

(b2) Notice of Initiation of Exploration, Development, and Production Activities to Owner of Subsurface Oil or Gas Resources. – If an oil or gas developer or operator is the lessee of subsurface oil or gas resources, before initiating oil or gas exploration or development operations with respect to those resources, the developer or operator shall give written notice to the lessor of those resources at least 30 days before the oil and gas operations are to be initiated. The notice, at a minimum, shall include all of the following:

(1) A description of the exploration or development plan, including, the proposed date on which the exploration or development will begin.
(2) The name, address, telephone number, and title of a contact person employed by or representing the oil or gas developer or operator who the lessor may contact following the receipt of notice.

(c) Venue. – If the oil or gas developer or operator fails to give notice or otherwise comply with the provisions of this section, the surface owner may seek appropriate relief in the superior court for the county in which the oil or gas well is located and may receive actual damages. (2011-276, s. 3(b); 2012-143, s. 4(a); 2014-4, s. 12.)

§ 113-421. Presumptive liability for water contamination; compensation for other damages; responsibility for reclamation.

(a) Presumptive Liability for Water Contamination. – It shall be presumed that an oil or gas developer or operator is responsible for contamination of all water supplies that are within a one-half mile radius of a wellhead that is part of the oil or gas developer's or operator's activities unless the presumption is rebutted by a defense established as set forth in subsection (a1) of this subsection. If a contaminated water supply is located within a one-half mile radius of a wellhead, in addition to any other remedy available at law or in equity, including payment of compensation for damage to a water supply, the developer or operator shall provide a replacement water supply to the surface owner and other persons using the water supply at the time the oil or gas developer's activities were commenced on the property, which water supply shall be adequate in quality and quantity for those persons' use.

(a1) [Rebuttal of Presumption.] In order to rebut a presumption arising pursuant to subsection (a) of this section, an oil or gas developer or operator shall have the burden of proving by a preponderance of the evidence any of the following:

(1) The contamination existed prior to the commencement of the drilling activities of the oil or gas developer or operator, as evidenced by a pre-drilling test of the water supply in question conducted in conformance with G.S. 113-423(f).

(2) The surface owner or owner of the water supply in question refused the oil or gas developer or operator access to conduct a pre-drilling test of the water supply conducted in conformance with G.S. 113-423(f).

(3) The water supply in question is not within a one-half mile radius of a wellhead that is part of the oil or gas developer's or operator's activities.

(4) The contamination occurred as the result of a cause other than activities of the developer or operator.

(a2) Compensation for Other Damages Required. – The oil or gas developer or operator shall be obligated to pay the surface owner compensation for all of the following:

(1) Any damage to a water supply in use prior to the commencement of the activities of the developer or operator which is due to those activities.

(2) The cost of repair of personal property of the surface owner, which personal property is damaged due to activities of the developer or operator, up to the value of replacement by personal property of like age, wear, and quality.

(3) Damage to any livestock, crops, or timber determined according to the market value of the resources destroyed, damaged, or prevented from reaching market due to the oil or gas developer's or operator's activities.

(a3) Reclamation of Surface Property Required. – An oil or gas developer or operator shall:

(1) Reclaim all surface areas affected by its operations no later than two years following completion of the operations. If the developer or operator is not the surface owner of the property, prior to commencement of activities on the property, the oil or gas developer or operator shall provide a bond running to the surface owner sufficient to cover reclamation of the surface owner's property. Upon registration with the Department pursuant to G.S. 113-378, a developer shall request that the Oil and Gas Commission set the amount of the bond required by this subsection. As part of its request, the developer shall provide supporting documentation, including information about the proposed oil and gas activities to be conducted, the site on which they are to occur, and any

additional information required by the Commission. The Commission shall set the amount of the bond in accordance with the criteria adopted by the Commission pursuant to G.S. 113-391(a)(13a) and notify the developer and surface owner of the amount within 30 days of setting the amount of a bond. A surface owner or developer may appeal the amount of a bond set pursuant to this subsection to the Commission within 60 days after receipt of notice from the Commission of the amount required. After evaluation of the appeal and issuance of written findings, the Commission may order that the amount of the bond be modified. Parties aggrieved by a decision of the Commission pursuant to this subsection may appeal the decision as provided under Article 4 of Chapter 150B of the General Statutes within 30 days of the date of the decision.

(2) Provide a bond running to the State sufficient to cover any potential environmental damage caused by the drilling process in an amount no less than one million dollars ($1,000,000). The Commission may increase the amount of the bond required by this subdivision if the Commission determines that the drilling operation would be sited in an environmentally sensitive area.

(a4) Remediation Required. – Nothing in this Article shall be construed to obviate or affect the obligation of a developer or operator to comply with any other requirement under law to remediate contamination caused by its activities.

(a5) Replacement Water Supply Required. – If a water supply belonging to the surface owner or third parties is contaminated due to the activities of the developer or operator, in addition to any other remedy available at law or in equity, the developer or operator shall provide a replacement water supply to persons using the water supply at the time the oil or gas developer's activities were commenced on the property, which water supply shall be adequate in quality and quantity for those persons' use.

(b) Time Frame for Compensation. – When compensation is required, the surface owner shall have the option of accepting a one-time payment or annual payments for a period of time not less than 10 years.

(c) Venue. – The surface owner has the right to seek damages pursuant to this section in the superior court for the county in which the oil or gas well is located. The superior court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. If the surface owner or the surface owner's assignee is the prevailing party in an action to recover unpaid royalties or other damages owed due to activities of the developer or operator, the court shall award any court costs and reasonable attorneys' fees to the surface owner or the surface owner's assignee.

(d) [Certain Limits Void. –] Conditions precedent, notice provisions, or arbitration clauses included in lease documents that have the effect of limiting access to the superior court in the county in which the oil or gas well is located are void and unenforceable.

(e) Joint and Several Liability. – In order to provide maximum protection for the public interest, any actions brought for recovery of cleanup costs, damages, or for civil penalties brought pursuant to this section or any other section of this Article or rules adopted thereunder may be brought against any one or more of the persons having control over the activities that contributed to the contamination, damage to property, or other violations. All such persons shall be jointly and severally liable, but ultimate liability as between the parties may be determined by common-law principles. (2011-276, s. 3(b); 2012-143, s. 4(b); 2013-365, s. 5(c); 2014-4, ss. 4(c), 13(a).)

§ 113-422. Indemnification.

An oil or gas developer or operator shall indemnify and hold harmless a surface owner against any claims related to the developer's or operator's activities on the surface owner's property, including, but not limited to, (i) claims of injury or death to any person; (ii) damage to impacted infrastructure or water supplies; (iii) damage to a third party's real or personal property; and (iv) violations of any federal, State, or local law, rule, regulation, or ordinance, including those for protection of the environment. (2011-276, s. 3(b); 2012-143, s. 4(c).)

§ 113-423. Required lease terms.

(a) Required Information to be Provided to Potential Lessors and Surface Owners. – Prior to executing a lease for oil and gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property, an oil or gas developer or operator, or any agent thereof, shall provide the lessor with a copy of this Part and a publication produced by the Consumer Protection Division of the North Carolina Department of Justice entitled "Oil & Gas Leases: Landowners' Rights." If the lessor is not the surface owner of the property, the oil or gas developer or operator shall also provide the surface owner with a copy of this Part and the publication prior to execution of a lease for oil and gas rights.

(b) Maximum Duration. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall expire at the end of 10 years from the date the lease is executed, unless, at the end of the 10-year period, oil or gas is being produced for commercial purposes from the land to which the lease applies. If, at any time after the 10-year period, commercial production of oil or gas is terminated for a period of six months or more, all rights to the oil or gas shall revert to the surface owner of the property to which the lease pertains. No assignment or agreement to waive the provisions of this subsection shall be valid or enforceable. As used in this subsection, the term "production" includes the actual production of oil or gas by a lessee, or when activities are being conducted by the lessee for injection, withdrawal, storage, or disposal of water, gas, or other fluids, or when rentals or royalties are being paid by the lessee. No force majeure clause shall operate to extend a lease beyond the time frames set forth in this subsection.

(c) Minimum Royalty Payments. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall provide that the lessor shall receive a royalty payment of not less than twelve and one-half percent (12.5%) of the proceeds of sale of all oil or gas produced from the lessor's just and equitable share of the oil and gas in the pool, which sum shall not be diminished by pre-production or post-production costs, fees, or other charges assessed by the oil or gas developer or operator against the property owner. Royalty payments shall commence no later than six months after the date of first sale of product from the drilling operations subject to the lease and thereafter no later than 60 days after the end of the calendar quarter within which subsequent production is sold. At the time each royalty payment is made, the oil or gas developer or operator shall provide documentation to the lessor on the time period for which the royalty payment is made, the quantity of product sold within that period, and the price received, at a minimum. If royalty payments have not been made within the required time frames, the lessor shall be entitled to interest on the unpaid royalties commencing on the payment due date at the rate of twelve and one-half percent (12.5%) per annum on the unpaid amounts. Upon written request, the lessor shall be entitled to inspect and copy records of the oil or gas developer or operator related to production and royalty payments associated with the lease.

(d) Bonus Payments. – Any bonus payments, or other initial payments, due under a lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall be paid by the lessee to the lessor within 60 days of execution of a lease. If a bonus payment or other initial payment has not been made within the required time frame, the lessor shall be entitled to interest on the unpaid amount commencing on the payment due date at the rate of ten percent (10%) per annum on the unpaid amount.

(e) Agreements for Use of Other Resources; Associated Payments. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall clearly state whether the oil or gas developer or operator shall use groundwater or surface water supplies located on the property and, if so, shall clearly state the estimated amount of water to be withdrawn from the supplies on the property, and shall require permission of the surface owner therefore. At a minimum, water used by the developer or operator shall not restrict the supply of water for domestic uses by the surface owner. The lease shall provide for full compensation to the surface owner for water used from the property by the developer or operator in an amount not less than the fair market value of the water consumed based on water sales in the area at the time of use.

(f) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall include a clause that requires the oil or gas developer or operator to pay for the reasonable costs involved in testing all water supplies within a one-half mile radius from a proposed wellhead that is part of the oil or gas developer's or operator's activities at least 30 days prior to initial drilling activities and at least five follow-up tests at six months, 12 months, 18 months, and 24 months after production has commenced and a test within 30 days after completion of production activities at the site. The Department shall identify the location of all water supplies, including wells, on a property on which drilling operations are proposed to occur. A surface owner shall use an independent third party selected from a laboratory certified by the Department's Wastewater/Groundwater Laboratory Certification program to sample wells located on their property, and the developer or operator shall pay for the reasonable costs involved in testing of the wells in question. Developers and operators may share analytical results obtained with other developers and operators as necessary or advisable. All analytical results from testing conducted pursuant to this section (i) shall be provided to the Department within 30 days of testing and (ii) shall constitute a public record under Chapter 132 of the General Statutes, and the Department shall post any results to the Department's Web site within 30 days of receipt of the results. Nothing in this subsection shall be construed to preclude or impair the right of any surface owner to refuse pre-drilling testing of wells located on their property.

(g) Recordation of Leases. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property, including assignments of such leases, shall be recorded within 30 days of execution in the register of deeds office in the county that the land that is subject to the lease is located.

(h) Notice of Assignment Required. – Written notice of assignment of any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall be provided to the lessor within 30 days of such assignment. If the surface owner of the property is not the lessor, written notice of assignment of any lease of oil or gas rights shall also be given to the surface owner of the property to which the lease pertains within 30 days of such assignment.

(i) Lender Approval of Lease. – Any lease for oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property with a surface owner shall include a conspicuous boldface disclosure concerning notification to lenders, which shall be initialed by the surface owner, and state the following:

> NOTICE TO LENDER(S) PRIOR TO EXECUTION OF LEASE:
> Surface owners are advised to secure written approval from any lender who holds a mortgage or deed of trust on any portion of the surface property involved in the lease prior to execution of the lease and obtain written confirmation that execution of the lease will not violate any provision associated with any applicable mortgage or deed of trust, which could potentially result in foreclosure.
> I have read and understood the terms of this provision. _____ Surface Owner's Initials

(j) Seven-Day Right of Rescission. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall be subject to a seven-day right of rescission in which the lessor or lessee may cancel the lease. A bold and conspicuous notice of this right of rescission shall be included in all such leases. In order to cancel the lease, the lessor or lessee shall notify the other party in writing within seven business days of execution of the lease, and the lessor shall return any sums paid by the lessee to the lessor under the terms of the lease. (2011-276, s. 3(b); 2012-143, s. 4(d); 2012-201, s. 12(d); 2014-4, s. 13(b).)

§ 113-423.1. Surface activities.

(a) Agreements on Rights and Obligations of Parties. – The developer or operator and the surface owner may enter into a mutually acceptable agreement that sets forth the rights and obligations of the parties with respect to the surface activities conducted by the developer or operator.

(b) Minimization of Intrusion Required. – An oil or gas developer or operator shall conduct oil and gas operations in a manner that accommodates the surface owner by minimizing intrusion upon and damage to the surface of the land. As used in this subsection, "minimizing intrusion upon and damage to the surface" means selecting alternative locations for wells, roads, pipelines, or production facilities, or employing alternative means of operation that prevent, reduce, or mitigate the impacts of the oil and gas operations on the surface, where such alternatives are technologically sound, economically practicable, and reasonably available to the operator. The standard of conduct set forth in this subsection shall not be construed to (i) prevent an operator from entering upon and using that amount of the surface as is reasonable and necessary to explore for, develop, and produce oil and gas and (ii) abrogate or impair a contractual provision binding on the parties that expressly provides for the use of the surface for the conduct of oil and gas operations or that releases the operator from liability for the use of the surface. Failure of an oil or gas developer or operator to comply with the requirements of this subsection shall give rise to a cause of action by the surface owner. Upon a determination by the trier of fact that such failure has occurred, a surface owner may seek compensatory damages and equitable relief. In any litigation or arbitration based upon this subsection, the surface owner shall present evidence that the developer's or operator's use of the surface materially interfered with the surface owner's use of the surface of the land. After such showing, the developer or operator shall bear the burden of proof of showing that it minimized intrusion upon and damage to the surface of the land in accordance with the provisions of this

subsection. If a developer or operator makes that showing, the surface owner may present rebuttal evidence. A developer or operator may assert, as an affirmative defense, that it has conducted oil or gas operations in accordance with a regulatory requirement, contractual obligation, or land-use plan provision that is specifically applicable to the alleged intrusion or damage. Nothing in this subsection shall do any of the following:

(1) Preclude or impair any person from obtaining any and all other remedies allowed by law.
(2) Prevent a developer or operator and a surface owner from addressing the use of the surface for oil and gas operations in a lease, surface use agreement, or other written contract.
(3) Establish, alter, impair, or negate the authority of local governments to regulate land use related to oil and gas operations. (2012-143, s. 4(e).)

§ 113-424: Repealed by Session Laws 2012-143, s. 4(f), effective July 2, 2012.

§ 113-425. Registry of landmen required.

(a) Establishment of Registry. – The Department of Environmental Quality, in consultation with the Consumer Protection Division of the North Carolina Department of Justice, shall establish and maintain a registry of landmen operating in this State. As used in this section, "landman" means a person that, in the course and scope of the person's business, does any of the following:

(1) Acquires or manages oil or gas interests.
(2) Performs title or contract functions related to the exploration, exploitation, or disposition of oil or gas interests.
(3) Negotiates for the acquisition or divestiture of oil or gas rights, including the acquisition or divestiture of land or oil or gas rights for a pipeline.
(4) Negotiates business agreements that provide for the exploration for or development of oil or gas.

(b) Registration Required. – A person may not act, offer to act, or hold oneself out as a landman in this State unless the person is registered with the Department in accordance with this section. To apply for registration as a landman, a person shall submit an application to the Department on a form to be provided by the Department, which shall include, at a minimum, all of the following information:

(1) The name of the applicant or, if the applicant is not an individual, the names and addresses of all principals of the applicant.
(2) The business address, telephone number, and electronic mail address of the applicant.
(3) The social security number of the applicant or, if the applicant is not an individual, the federal employer identification number of the applicant.
(4) A list of all states and other jurisdictions in which the applicant holds or has held a similar registration or license.
(5) A list of all states and other jurisdictions in which the applicant has had a similar registration or license suspended or revoked.
(6) A statement whether any pending judgments or tax liens exist against the applicant.

(c) The Department may deny registration to an applicant, reprimand a registrant, suspend or revoke a registration, or impose a civil penalty on a registrant if the Department determines that the applicant or registrant does any of the following:

(1) Fraudulently or deceptively obtains, or attempts to obtain, a registration.
(2) Uses or attempts to use an expired, suspended, or revoked registration.
(3) Falsely represents oneself as a registered landman.
(4) Engages in any other fraud, deception, misrepresentation, or knowing omission of material facts related to oil or gas interests.
(5) Had a similar registration or license denied, suspended, or revoked in another state or jurisdiction.
(6) Otherwise violates this section.

(d) An applicant may challenge a denial, suspension, or revocation of a registration or a reprimand issued pursuant to subsection (c) of this section, as provided in Chapter 150B of the General Statutes.

(e) The Department shall adopt rules as necessary to implement the provisions of this section. (2012-143, s. 4(g); 2015-241, s. 14.30(u).)

§ 113-426. Publication of information for landowners.

In order to effect the pre-lease publication distribution requirement as set forth in G.S. 113-423(a), and to otherwise inform the public, the Consumer Protection Division of the North Carolina Department of Justice, in consultation with the North Carolina Real Estate Commission, shall develop and make available a publication entitled "Oil & Gas Leases: Landowners' Rights" to provide general information on consumer protection issues and landowner rights, including information on leases of oil or gas rights, applicable to exploration and extraction of gas or oil. The Division and the Commission shall update the publication as necessary. (2012-143, s. 4(h).)

§ 113-427. Additional remedies.

The remedies provided by this Part are not exclusive and do not preclude any other remedies that may be allowed by law. (2012-143, s. 4(i).)