

RCW 78.52.335 Unit operation of pools. (1) The department shall upon the application of any interested person, or upon its own motion, hold a hearing to consider the need for the operation as a unit of one or more pools or parts of them in a field.

(2) The department may enter an order providing for the unit operations if it finds that:

(a) The unit operations are necessary for secondary recovery or enhanced recovery purposes. For purposes of this chapter secondary or enhanced recovery means that oil or gas or both are recovered by any method, artificial flowing or pumping, that may be employed to produce oil or gas, or both, through the joint use of two or more wells with an application of energy extrinsic to the pool or pools. This includes pressuring, cycling, pressure maintenance, or injections into the pool or pools of a substance or form of energy: PROVIDED, That this does not include the injection in a well of a substance or form of energy for the sole purpose of (i) aiding in the lifting of fluids in the well, or (ii) stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means;

(b) The unit operations will protect correlative rights;

(c) The operations will increase the ultimate recovery of oil or gas, or will prevent waste, or will prevent the drilling of unnecessary wells; and

(d) The value of the estimated additional recovery of oil and/or gas exceeds the estimated additional cost incident to conducting these operations.

(3) The department may also enter an order providing for unit operations, after notice and hearing, only if the department finds that there is clear and convincing evidence that all of the following conditions are met:

(a) In the absence of unitization, the ultimate recovery of oil or gas, or both, will be substantially decreased because normal production techniques and methods are not feasible and will not result in the maximum efficient and economic recovery of oil or gas, or both;

(b) The unit operations will protect correlative rights;

(c) The unit operations will prevent waste, or will prevent the drilling of unnecessary wells;

(d) There has been a discovery of a commercial oil or gas field; and

(e) There has been sufficient exploration, drilling activity, and development to properly define the one or more pools or parts of them in a field proposed to be unitized.

(4) Notwithstanding any of the above, nothing in this chapter may be construed to prevent the voluntary agreement of all interested persons to any plan of unit operations. The department shall approve operations upon making a finding consistent with subsection (2) (b) and (c) of this section.

(5) The order shall be upon terms and conditions that are fair and reasonable and shall prescribe a plan for unit operations that includes:

(a) A description of the pool or pools or parts thereof to be so operated, termed the unitized area;

(b) A statement of the nature of the operations contemplated;

(c) An allocation of production and costs to the separately-owned tracts in the unitized area. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no agreement, production shall be allocated in a manner calculated to ensure that each owner's correlative rights are protected, and each

separately-owned tract or combination of tracts receives its fair and reasonable share of production. Costs shall be allocated on a fair and reasonable basis;

(d) A provision, if necessary, prescribing fair, reasonable, and equitable terms and conditions as to time and rate of interest for carrying or otherwise financing any person who is unable to promptly meet his or her financial obligations in connection with the unit, such carrying and interest charges to be paid as provided by the department from the person's prorated share of production;

(e) A provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the owner's interest;

(f) The time when the unit operations shall commence, the timetable for development, and the manner and circumstances under which the unit operations shall terminate; and

(g) Additional provisions which are found to be appropriate for carrying out the unit operations and for the protection of correlative rights.

(6) No order of the department providing for unit operations may become effective until:

(a) The plan for unit operations approved by the department has been approved in writing by those persons who, under the department's order, will be required to pay at least seventy-five percent of the costs of unit operations;

(b) The plan has been approved in writing by those persons such as royalty owners, overriding royalty owners, and production payment owners, who own at least seventy-five percent of the production or proceeds thereof that will be credited to interests that are free of costs; and

(c) The department has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the department shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the persons owning required percentages of interest in the unitized area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, or within such additional period or periods of time as the department prescribes, the order will become unenforceable and shall be vacated by the department.

(7) An order providing for unit operations may be amended by an order made by the department in the same manner and subject to the same conditions as an original order, except as provided in subsection (8) of this section, providing for unit operations, but (a) if such an amendment affects only the rights and interests of the owners, the approval of the amendment by those persons who own interests that are free of costs is not required, and (b) no such amending order may change the percentage for the allocation of oil and gas as established for any separately-owned tract or combination of tracts by the original order, except with the consent of all persons owning oil and gas rights in the tract, and no such order may change the percentage for the allocation of cost as established for any separately-owned tract or combination of tracts by the original order, except with the consent of all persons owning an interest in the tract or combination

of tracts. An amendment that provides for the expansion of the unit area shall comply with subsection (8) of this section.

(8) The department, by order, may provide for the unit operation of a reservoir or reservoirs or parts thereof that include a unitized area established by a previous order of the department. The order, in providing for the allocation of unit production, shall first treat the unitized area previously established as a single tract and the portion of the new unit production allocated thereto shall then be allocated among the separately-owned tracts included in the previously established unit area in the same proportions as those specified in the previous order.

(9) After the date designated by the department the unit plan shall be effective, oil and gas leases within the unit area, or other contracts pertaining to the development thereof, shall be changed only to the extent necessary to meet the requirements of the unit plan, and otherwise shall remain in full force. Operations carried on under and in accordance with the unit plan shall be regarded and considered as fulfillment of and compliance with all of the provisions, covenants, and conditions, expressed or implied, of the several oil and gas leases upon lands within the unit area, or other contracts pertaining to the development thereof, insofar as the leases or other contracts may relate to the pool or field subject to the unit plan. The amount of production apportioned and allocated under the unit plan to each separately-owned tract within the unit area, and only that amount, regardless of the location of the well within the unit area from which it may be produced, and regardless of whether it is more or less than the amount of production from the well, if any, on each separately-owned tract, shall for all purposes be regarded as production from the separately-owned tract. Lessees shall not be obligated to pay royalties or make other payments, required by the oil and gas leases or other contracts affecting each such separately-owned tract, on production in excess of that amount apportioned and allocated to the separately-owned tract under the unit plan.

(10) The portion of the unit production allocated to any tract and the proceeds from its sale are the property and income of the several persons to whom, or to whose credit, the portion and proceeds are allocated or payable under the order providing for unit operations.

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

(12) Except to the extent that parties affected so agree, an order providing for unit operations shall not be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area, and shall be the property of those owners in the proportion that the expenses of unit operations are charged.

(13) After the date designated by the order of the department that a unit plan shall become effective, the designation of one or more unit operators shall be by vote of the lessees of land in the unit area, in a manner to be provided in the unit plan, and any

operations in conflict with such unit plan shall be unlawful and are prohibited.

(14) A certified copy of any order of the department entered under this section is entitled to be recorded in the auditor's office in the county or counties wherein all or any portion of the unit area is located and, if recorded, constitute notice thereof to all persons. A copy of this order shall be mailed by certified mail to all interested persons.

(15) No order for unitization may be construed to allow the drilling of a well on a tract within the unit which is not leased or under contract for oil and gas exploration or production. [1994 sp.s. c 9 § 843; 1983 c 253 § 23.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.