LAWS RELATING TO MINERAL AND OTHER NON-ANIMAL RESOURCES

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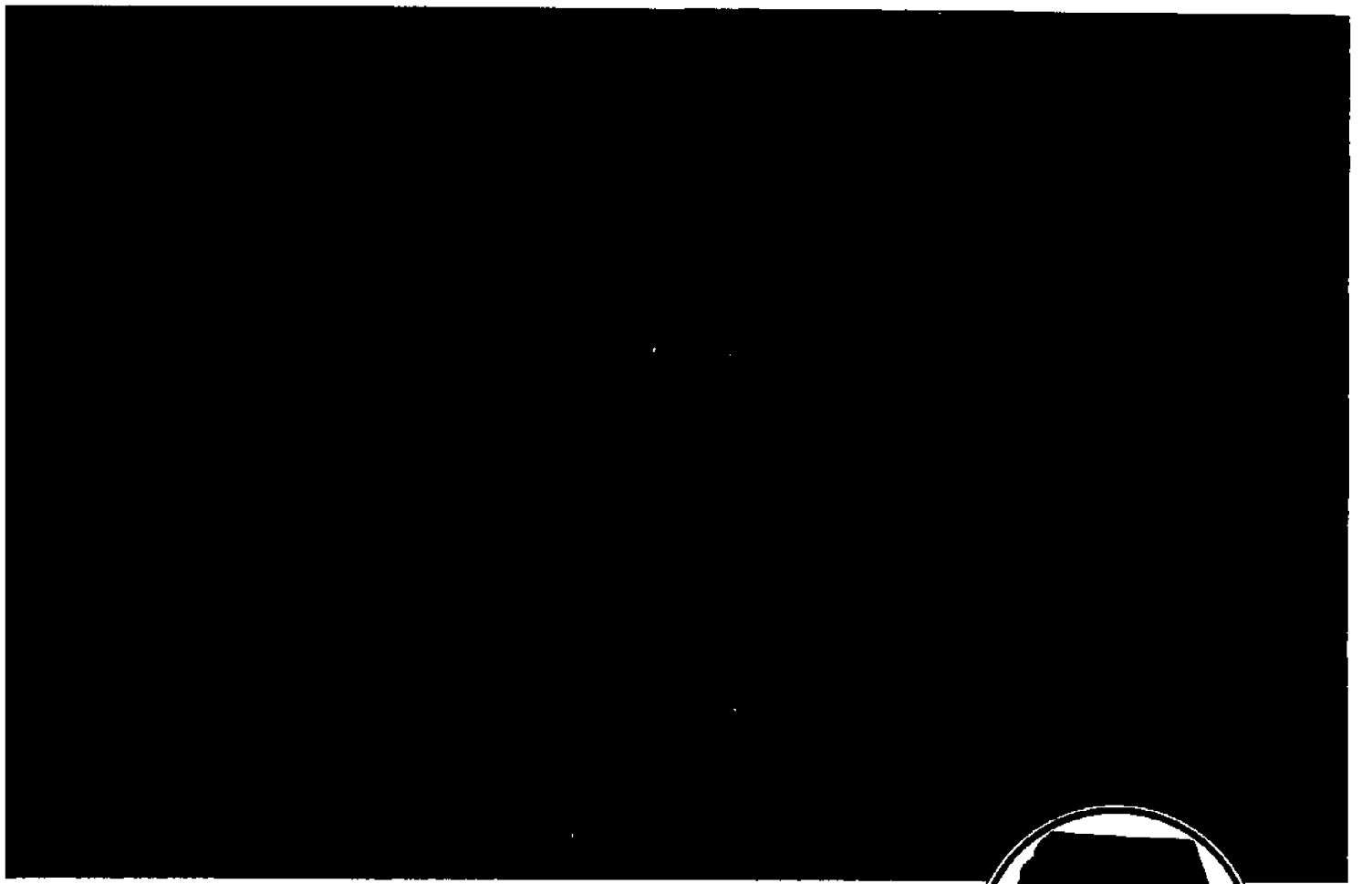

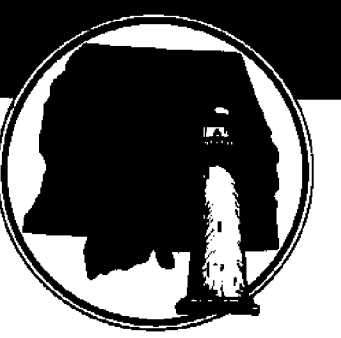

MISSISSIPPI-ALABAMA SEA GRANT CONSORTIUM

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LAWS RELATING TO MINERAL AND OTHER NON-ANIMAL RESOURCES

Preliminary Draft

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FOREWORD

This volume is one of ten representing a compilation of Mississippi laws which most significantly affect the use and development of the state's marine and coastal zone. This project was conceived and substantially completed by Professor Frank L. Maraist of the University of Mississippi Law Center under the auspices of Mississippi-Alabama Sea Grant Consortium and the University of Mississippi.

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LAWS RELATING TO MINERAL AND OTHER NON-ANIMAL RESOURCES.

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I. OIL AND GAS

A. INTRODUCTION

Statutes and regulations concerning the discovery, production, and transportation of the oil and gas resources of the State of Mississippi are located in two primary repositories - §§ 51-1-1 et seq. of the Mississippi Code Annotated; and the orders, rules and regulations of the State Oil and Gas Board. The Oil and Gas Board is, as one might expect, the governmental agency given definitive control over this area of state law, within the board parameters laid down by the legislature. The Board's Order No. 201-51, promulgated in 1951, remains the most comprehensive statement of the legal obligations attendant upon those who participate in the procurement and development of our oil and gas resources.

B. THE STATE OIL AND GAS BOARD: 1. COMPOSITION AND GENERAL FUNCTIONS

The State Oil and Gas Board is governed in its responsibilities and functions by Chapter 256 of the Laws of 1948, as amended by Chapter 220 of the Laws of 1950.[1] The Board is composed of five members, appointed to staggered terms which range in duration from 2-6 years. The governor designates three of these members, one from each of the three Supreme Court districts. The lieutenant governor selects the fourth, while the fifth is chosen by the attorney general. No more than two members may be residents of any one Supreme Court district. Further, no person who is connected with any individual or group engaged in the business of trading in leases of minerals, drilling wells, or producing, transporting, refining or distributing oil or gas in Mississippi or any other state is eligible either for membership on or employment by the Board. Each Board member receives as compensation for his work a salary of

of $4400 annually, with the exception of the Board chairman who, upon his election by the other members of the Board, is paid $5000.[2] This relatively low salary scale is strong evidence that the operations of the Board require participation by the members only on a part time basis.

The Board appoints and directs a State Oil and Gas Supervisor who enforces the provisions of the Oil and Gas Act and all rules, regulations and orders of the Board established pursuant thereto. With the concurrence of Board members, the Supervisor employs whatever personnel are necessary to assist him in discharging his responsibilities.[3]

The Board possesses a general statutory mandate to enforce effectively the Oil and Gas Act and any other acts which the legislature may pass concerning the conservation of oil and gas within the state. The power of the Board to investigate and inspect wells and records has been pointedly included. Additionally, the legislature has provided the Board with a philosophical guideline in stating that the duty of the Board is generally to prevent the waste of the oil and gas resources of the state.[4]

More specifically, the Board is charged with a list of duties which must be fulfilled by the passage of appropriate rules and regulations. The obligations are presented by the legislature as a minimal level of activity. The door is left open for the assumption of additional obligations as changing circumstances require.[5] The necessary operations include the promulgation and enforcement of rules and regulations to:

1. Require that drilling, casting, plugging of wells be done in order to prevent the escapage of oil and gas, to avoid the intrusion of water into oil and gas deposits, to abate pollution in accordance

with the requirements of the Mississippi Air and Water Pollution Control Commission, and to forestall seepage or overflow which may damage the topsoil.

2. Chart the location of all oil and gas wells in the state and require filing of the locations of new wells within thirty (30) days of their completion.
3. Require a reasonable surety bond be posted in order to assure that the obligations outlined in 1. and 2. will be met.
4. Protect strata capable of producing oil or gas in paying quantities from the encroachment of water.
5. Prevent "blowouts," "carving," and "seepage," as these terms are generally understood in the oil and gas industry.
6. Require the wells be operated with efficient gas-oil ratios and fix the limits of those ratios.
7. Prevent the creation of unnecessary fire hazards.
8. Identify the ownership of all oil and gas wells, storage structures, equipment, and other facilities.
9. Regulate the shooting, perforating, and chemical treatment of wells.
10. Regulate secondary recovery methods.
11. Regulate the spacing of wells and establish drilling units.
12. Allocate and apportion on a fair and equitable basis the production of oil or gas from any pool or field for the prevention of waste. The Board is to investigate the cost and certify the amount of expenses incurred in the drilling of discovery wells in the pool or field,

which wells are not liable to the restrictions of the Oil and Gas Act until the cost of drilling is recovered.

13. Prevent reasonably avoidable drainage from each developed unit which is not equalized by counter drainage.

14. Require parties making settlements with the owners of oil or gas interests to render a statement showing the quantity and gravity of the oil and/or gas purchased and the price per barrel of oil and per 1000 cubic feet of gas.

15. Require certificates of clearance concerning transportation and delivery of oil, gas, or any related product.[6]

The Board has moved to enact rules and orders which implement the commands of the legislature. In 1951, the Board adopted a series of rules collected and styled as Order No. 201-51. Under this edict, all previous statewide rules were revoked[7] and the general rules set forth under the new order were given statewide application.[8] The order did provide, however, that any special field or pool rules which were then in effect were to remain in force, prevailing over any new general rules to the contrary.[9] Moreover, the order listed an additional duty assumed by the Board - that of naming all oil and gas fields in the state as recommended by the Mississippi Geological Society.[10]

Except in the event of an emergency, no rule, order, regulation, change, renewal, or other substantive act can be made by the Board except after a public hearing conducted after at least ten days' notice. At the hearing, any interested party has the right to be heard by the Board.[11] If an emergency does arise which requires action by the Board with such speed that a public hearing is impossible,

any rule, order, or regulation made without a hearing can remain in effect no longer than forty-five (45) days from the date of its promulgation. In any case, it expires whenever the rule, order, or regulation made after due notice and regular hearing which deals with the emergency becomes effective.[12] Although only a majority of the Board is needed to constitute an operative quorum, three affirmative votes are necessary for all substantive actions.[13]

Any interested person can compel the Board to call a hearing concerning any matter over which the Board has jurisdiction.[14] The Board has the power to subpoena witnesses and force the production of any documents relevant to the subject of the hearing.[15] Hearings for the purpose of establishing allowable production quotas of gas are held regularly each month. Hearings to establish or change allowable production quotas of oil in any field are held whenever called by the Board, or whenever an interested party petitions the Board for such a hearing.[16]

All public hearings of the Board are transcribed by a reporter who serves the same functions as does the court reporter in the circuit courts of the state. All transcripts of public hearings are admissable as evidence in appeals to circuit courts from decisions of the Board. All rules, regulations, and orders of the Board are recorded and are matters of public record.[17]

A final ruling, order, or regulation by the Board does not preclude further appeal by the aggrieved party. He may appeal a final ruling by the Board to the first judicial district of Hinds County, Mississippi, or to the circuit court of the county in which all or part of appellant's property is located. This appeal must be perfected within thirty (30) days.[18] Alternatively, any interested party

adversely affected by a ruling may, within thirty (30) days, appeal to the chancery court of the county in which the land involved is located.[19] The Board is required to make available to the court a copy of the transcript of the public hearing held prior to the final ruling which has sparked the controversy. The state has the same rights of appeal as do private parties.[20] The decisions of the circuit and chancery courts are in turn appealable to the Supreme Court of Mississippi.[21]

In addition to its primary responsibilities as conservator of oil and gas resources for the state, the Board has also been integrated into the state's civil defense plan. In the event of natural disaster or military emergency, the Board controls emergency distribution of petroleum products and other fuel and energy sources, as well as maintaining information on petroleum and gas resources outside the state. In the discharge of these secondary responsibilities, the Board cooperates with the Research and Development Center on Resource Management.[22]

2. THE ENFORCEMENT MACHINERY

Rules, orders, and regulations which after this process have been found to be valid are capable of enforcement through a number of appropriate devices. The legislature has denominated evasion or violation of this Act (§§ 53-1-1 et seq. of the Miss. Code Ann.) or any rule or order which the Board may enact pursuant to it a misdemeanor, punishable by a fine of up to $500 or imprisonment of up to six months, or both.[23]

Recognizing that many of the violations will be of a continuing nature, the legislature has further provided that each day the violation continues shall be considered a separate violation, each of which is punishable by a fine of $500.

This penalty is recoverable in the circuit court of the county in which any defendant resides. It is expressly stipulated that payment of this continuing fine will not serve to legalize the illegal acts of the defendant, nor will it transform illegally produced oil, gas, or petroleum products into legal material. Any person or group who aids or abets a violator in his illegal enterprise is subject to the same penalties that attach to the violator.[24] Before a penalty may be imposed for the commission of an act, the Board must have previously defined that act as illegal, except when the actor should have know, exercising reasonable diligence, or by facts known to him that the act was improper.[25]

Equitable weapons are also at hand to assist the Board and interested parties in securing cessation of illegal practices. Prohibitory and mandatory injunctions, including preliminary injunctions and temporary restraining orders may be issued against any person who appears to be in violation of any statute of this state concerning the conservation of oil or gas or any rule or regulation enacted pursuant thereto. Suit may be brought by the Board in the chancery court of the county in which the defendant resides, or in which his property is located. Private action is also provided for in the event the Board fails to act. For if the Board does not bring suit against the violator, any person who has previously requested that such an action be brought and is adversely affected may, after allowing the Board ten days to act on his request, bring the suit in the chancery court. In such an action precipitated by a private party, the Board is made a party to the action.[26]

Still more pressure on violators may be exerted in another form. Should a producer or operator fail to comply with any rule or regulation of the Board,

the Board notifies transporters of that producer or operator's failure and those transporters so notified are required to refrain from transporting oil, gas, or condensate from the property in question until notified by the Board of the acquiescence of the violator.[27]

Persons involved in oil and gas production may well find themselves in violation of another, albeit more oblique, web of statutes and rules. For the Air and Water Pollution Control Commission also exercises control over some facets of the oil and gas industry. The legislature has decreed that it is unlawful for any person to build or operate any equipment which will cause the issuance of air contaminants unless he holds a permit from the Air and Water Pollution Control Commission. The Commission may revoke or deny any permit when it is necessary to prevent, control, or abate air pollution. Any person denied a permit is afforded an opportunity for a hearing before the Commission. Statute also provides, more generally, that it is unlawful for any person to: (1) cause pollution of any state waters, and (2) discharge any wastes into any waters of the state which reduce the quality of the water below established standards.[28]

Oil, gas, or other petroleum products which are developed or extracted in violation of a statute or Board standard are treated as contraband - to be seized and sold. If such illegal material is discovered, the attorney general must bring an in rem action in the circuit court of the county in which the contraband is found. The sheriff of the county then serves the defendant-owner with a summons. After publication of process and a statutory waiting period, the commodity is treated as contraband, and seized and sold by the sheriff in a manner similar to the procedure prescribed for the sale of personal property.

The party contesting the seizure may secure the product against seizure by posting a bond in twice the amount of the value of the commodity in question, pending the cirucit court action.[29]

3. PERMITS AND TAXES

In order to effectively perform its duties, the State Oil and Gas Board has established a comprehensive system of checks and documents[30] which maintain an almost constant dialogue between the Board and each individual producer and participant in the process. Permits are required as a prerequisite for each step in the procedure of discovery, extraction, and manufacture of oil and gas. These permits supplement the Board's substantive rulings and insure their enforcement.

Prior to taking action, any person who desires to drill any well in search of gas or oil must make application to the Board notifying it of his intentions and requesting permission to drill for oil or gas. Drilling may not begin without a permit from the Board.[31] Application for this permit is also required before drilling a stratigraphic test, or any well below the fresh water level except a salt water disposal well.[32] The permit is issued for a fee of $100 which is paid to the Oil and Gas Supervisor at the time of the application.[33] The fee may be reduced in amount by the Board.[34] Once issued, this permit remains valid for six months, and if drilling begins within that time, no further fee need be paid for the life of the well.[35] Should a change of operators occur in a well that has already been issued a permit to drill, both the outgoing and incoming operators must, within ten days of the transfer, apply to the Board for authority to change.

A fee of $25 is now charged for such a change, but an increase in the amount of the fee to $50 is permitted by statute.[36]

Similarly, applications for drilling permits must be filed for the drilling of a salt water disposal well, or the conversion of an oil or gas well to a salt water disposal well. In this case, the concomitant fees required are $50 for the initial drilling and $25 for conversion.[37]

No pressure maintenance plant, cycling plant, gas return plant, salt water disposal system, or similar plant or project may operate until it has been authorized by the Board.[38] Too, application must be made and permits issued before gas, air, or water may be injected into any reservoir.[39]

Should it become necessary for a firm or corporation to construct a facility in any of the navigable waters of the state, application must be made to the Board for issuance of a permit authorizing such a construction.[40] The permit is granted for a fee of $500 payable to the Board by the constructing person or corporation.[41]

On initiation of drilling, each gas and oil well must be posted with a sign showing the name of the person drilling, operating, owning and controlling the well, the name of the lease and the number of the well.[42] Upon completion or recompletion of the drilling of an oil or gas well, a completion report must be filed with the Board, who will then designate that well a producing oil or gas well. No well which initially received a permit as a stratigraphic test or a corehole may be completed as a producing well until application is filed and a permit is granted in the same manner as for drilling an oil or gas well.[43]

Should a fire, break, leak, or blowout occur in any oil or gas well,

pipeline, receiving or storage facility, the operator must notify the Board, listing damages and possible remedial action.[44] No well is allowed to begin production of oil or gas from different pools until the pools have been defined and a permit granting permission for such production is obtained from the Board.[45]

Once drilling is completed and production of oil or gas is begun, a new series of reports and permits is required on a regular, periodic basis. Each producer or operator of any well must execute and file with the Board a "Producer's Certificate of Compliance and Authorization to Transport" for each well he operates, which attests to knowledge of the conservation laws and regulations and constitutes authorization for the pipeline or other transporter to transport from the drilling unit named therein. A certificate is required before transportation of the oil or gas begins, but a seven day temporary connection to a pipeline is allowed to prevent waste and accomodate the production of the well while the operator secures a permanent certificate. A new certificate must be executed and filed with each change of operating ownership or transporter, except for temporary changes of transporters. Otherwise the certificate remains in effect unless cancelled by the Board for violation of conservation laws.[46] Each producer or operator of an oil or gas well must furnish to the Board a monthly well status report,[47] together with a "Producer's Monthly Report".[48] All gas produced from gas wells within the state which is taken into a fuel system is reported to the Board by the person taking.[49]

It is not only operators of gas and oil who fall under the control of the Oil and Gas Board, however. Other related operatives must also answer periodically for their activities. All persons acting as principal or agent for another

or who are independantly engaged in production, storage, transportation, refining, reclaiming, treating, marketing, processing, or scientific exploration for crude oil or gas must file with the Board.[50] Each operator of a gasoline plant, or any other plant at which gasoline, kerosene, butane, propane, condensate, oil or other liquid products are extracted from gas within the state must submit a monthly report to the Board.[51] Further, every person injecting gas or fluid into the earth is compelled to render a monthly report to the Board showing the quantities of oil, gas, and water injected, and identifying the underground reservoir into which the injection is made.[52]

All refiners of oil within the state must furnish to the Board monthly reports containing complete information respecting oil and petroleum products involved in their operations.[53] Whenever a service company other than the drilling contractor is called upon to cement, perforate, or acidize, that service company is required to furnish the Board with copies of any and all reports which that company has made available to the owner of the well.[54]

More permits and dialogue of an extraordinary nature are necessitated as the well ends its productive life and is abandoned or converted to another use. When any oil well goes off production or becomes incapable of producing its allowable quota, the operator of that well must notify the Board.[55] After the initial drilling of a well has been discontinued, the well may not be deepened or plugged up without giving notice to the Board, in writing or by telephone in the event of an emergency. Within thirty days of the shooting or chemical treatment of an oil or gas well which is recompleted in the same pool, the operator of the well must file a notification with the Board.[56] Before a dry hole or no

longer producing well may be plugged up, mudded, and cemented, the operator must give written notice to the Board, who may issue a plugging permit and send a representative to witness the plugging.[57] If a well to be plugged may be safely used as a fresh water well, written authority must be secured from the landowner and filed with the Board.[58] Before any person may begin to extract casings from wells, or before he purchases a well with the intention of salvaging casing, he must apply for a permit from the Board and file with the Board a bond to insure the proper plugging of the wells in question. A permit must also be applied for and issued before any person may begin to clean storage tanks.[59]

The activities of the State Oil and Gas Board and the overall enforcement of the conservation laws of the state are funded from two sources - (1) a tax charge placed on oil and gas produced in the state, and (2) the permit fees discussed above. The legislature has authorized the Board to levy a tax not to exceed three mills on each barrel of oil produced and saved in the state, and not to exceed 1/5 of a mill on each 1000 cubic feet of gas produced, saved, and sold in the state.[60] Each owner is liable for the monthly payment of these fees in proportion to his share of ownership of the well at the time of production. If the oil or gas is purchased at the well under a formal contract, the purchaser becomes liable for this tax. However, if the purchase is made at the well without a contract, the operator of the well retains responsibility for the payment of taxes. These charges are assessed monthly by the twenty-fifth day following the month in which the production occurred.[61]

This money, together with the fees received for the various permits required and granted by the Board, flows into a special fund known as the "Oil

and Gas Conservation Fund." This fund contains all monies collected and used for the Board's operating expenses and the administration and enforcement of the conservation laws. The usual accounting procedures - i.e., approvals, receipts, vouchers, itemized statements - are required for all expenditures.[62]

4. PRODUCTION AND REGULATION OF INDUSTRY

As operative terms, the Board has defined a barrel of oil as forty-two (42) United States standard gallons corrected to 60 degrees Fahrenheit. All measurements for volume are made in 100% tank strappings. A cubic foot of gas is defined as the volume of gas which occupies one cubic foot of space at a pressure of ten (10) ounces above an atmospheric pressure of 14.4 pounds per square inch, corrected to 60 degrees Fahrenheit flowing temperature. The term "persons" includes corporations.[63]

The Board has the power to regulate drilling and the location of wells in any pool so as to prevent unlawful waste[64] and reasonably avoidable net drainage - i.e., drainage which is not equalized by counter drainage. The Board may call hearings to determine the maximum efficiency rate at which any or all pools in the state can produce oil and gas without waste.[65] After a hearing, the Board is required to establish a drilling unit or units for each pool. In creating these units, the Board strives to prevent waste of petroleum resources, protect the rights of the owners of the tracts, and avoid the accumulation of risks which arises from drilling.[66]

To facilitate control, the Board requires that every person owning, operating, or controlling a refinery, tank farm, cycling plant, repressuring or pressure maintenance facility, extraction plant, or pipeline pumping station must maintain

on the premises near the facility a sign which displays the name of the owner and operator.[67] Similarly, all transporters, producers, storers, refiners, extraction plant operators, and initial takers of gas within the state must maintain appropriate records covering their operations.[68] In the case of transporters, these records include lease allowables and quantities of oil removed from the leases to which the transporter is connected, so that he can determine the quantity of legal oil on hand at the close of each month with respect to those leases.[69] All producers or operators are prohibited from delivering illegal oil to any transporter, and each transporter has a concomitant duty to refuse to remove any illegal oil.[70] All persons who purchase oil or gas from owners, operators, and producers must purchase without discrimination in favor of one or against another in the same common source of supply.[71]

All drilling must be done in accordance with the rules and regulations established by the Board. Any exceptions thereto must be reasonable and made with the approval of the Board.[72] The Board may grant an exception to the normal spacing rule for oil wells[73] when it determines that the unit is partly outside the pool or that a well is so located on the unit that it would be non-productive or unduly burdensome. Application for an exception, accompanied by detailed explanations, should be submitted to the Board.[74] Whenever an exception is granted, the Board will take action to offset any advantage which may accrue to the producer as a result of the granting of the exception.[75]

Unless otherwise provided, allocation and apportionment of production allowable quotas is based on the surface acreage content of the drilling unit. Each prescribed unit possesses an equal opportunity to produce the same daily allowable.[76]

Each producing gas well is subject to a deliverability test, which is set by the Board in order to determine whether or not the well is capable of producing efficiently any allowable which may reasonably be assigned to it. Each oil well must be tested by the operator once each month and the results of that test reported to the Board.[77] A special unit of less that the prescribed amount of surface acreage will of course have its daily allowable reduced proportionately to the regular surface acreage. Within its reduced allowable, however, it will still have an equal opportunity to produce. Practices which lead to waste and violation of the conservation laws may lead to action in the individual case which could well change this equal opportunity.[78]

The reasonable minimum amount of productive acreage for oil well drilling units is determined for all purposes as though it were a regular governmental quarter-quarter section (40 acres). In the case of a gas well drilling unit, the standard minimum amount of productive acreage becomes the equivalent of a governmental half section (320 acres).[79] Whenever the productive acreage of a unit, as determined by the Board, is greater or less than the standard minimum productive acreage, the allowable production of that unit may increased or decreased in proportion to the variance.[80] The acreage is calculated by considering the drilling unit a triangular shaped area bounded on two sides by exterior boundaries meeting at a 90 degree angle, and on the third side by a straight line which intersects the other two at 45 degrees angles.[81] However, a drilling unit which contains one or more boundaries lying near the center of the main navigable channel of the Mississippi River or any other river constituting a part of the boundary of the state is considered a flexible unit. The size and shape of the unit changes with any move-

ments in the boundary line. Any such changes which affect the acreage content of a flexible unit will not reduce the allowable allocation.[82]

Whenever two or more separately owned tracts of land are included within one drilling unit, the owners of the tracts may decide to integrate their operations and develop the land as a single drilling unit. In the event that the owners do not integrate their interests, the Board may require such an integration in the interests of the prevention of waste and the avoidance of the drilling of unnecessary wells. An order of this type will not be issued until after notice has been given and a hearing among all interested parties has been held. Then, should an integration be deemed necessary by the Board, provision will be made within the order for the recovery and equitable distribution of expenses incurred by the various owners prior to the integration, and for the fair sharing of the production of the drilling unit. Only reasonable costs actually necessary to the operation of the well shall be charged by the operator to the other members of the pool, and in the event that the unit does not produce oil or gas in any paying quantities, the operator does not have any charge against nonconsenting owners. Any dispute over charges or expenses shall be settled by the Board, again after notice and a hearing. Such a decision may be appealed, in the same manner as is any other decision of the Board.[83]

Whenever a drilling unit has been formed from two or more separately owned tracts, the Board must, upon demand by the owners of those tracts, compel the operator of the unit to deliver to the owners their proportionate share of the production of the unit, provided that adequate storage facilities for the oil or gas have been provided by the owner.[84]

Agreements made between and among owners and operators for the purpose of pooling or in the interest of conservation of oil or gas are not to be considered to violate state statutes relating to trusts, monopolies, or contracts and combinations in restraint of trade, if those agreements are approved by the Board.[85]

Should the owners of separate tracts included within a single drilling unit fail to integrate their interests, and if the board is without power to compel an integration, the owners may individually drill on their own tracts. However, the allowable production of each separate tract is limited to the proportion of the allowable production of the full drilling unit the area of the separate tract bears to the area of the full drilling unit.[86]

In order to prevent waste and avoid the drilling of unnecessary wells, the Board may permit the cycling of gas in any pool and the introduction of gas or some other substance into an oil or gas reservoir injected to repressurize that reservoir.[87]

If the Board deems it necessary in order to avoid waste to fix the allowable production of any pool at an amount less than the amount which the pool is capable of producing, the Board must apportion the allowable equitably between and among the owners of the tracts involved. Once the allowable production is established by the Board through an effective rule or regulation, no person may directly or indirectly produce more than the allowable portion which is applicable to him.[88] The Board has promulgated orders designating the allowable production of oil for newly completed wells and rejuvenated wells that begin producing during an allowable period, which deal with the remainder of that period. Also, rules are available

governing allowable production of oil wells which have been completed in a pool for which maximum efficiency rates have not yet been established.[89] Wells which produce both oil and gas in a ratio in excess of 2000 cubic feet of gas per barrel of oil are additionally regulated by the Board insofar as daily limits of gas and oil are concerned.[90]

Generally, the allowable production quota of oil is calculated on a monthly basis by the Board. However, no well can produce more than twice its daily allowable during any twenty-four hour period. The Board has recognized the difficulties which inher in any effort to produce the allowable to the exact number of barrels of oil. Therefore, monthly production may be exceeded by an amount equal to but not more than three days' allowable production.[91]

In order to aid the Board in enforcing its prescribed allowable production quotas, the legislature has endowed it with the power to force all persons involved in the production or transportation of oil or gas to place meters wherever the Board may designate. The meters must comply with the Board's specifications and the Board and its employees must be given access to them at all times. Any company or person who refused to comply with such a request by the Board is in violation of the Oil and Gas Act.[92]

The legislature has granted to any firm or corporation authorized to explore or produce oil, gas , or other minerals and those authorized to transport those materials the right to construct, operate and maintain whatever facilities are necessary to their operations in any of the navigable waters of the state. This right to construct facilities is conditional upon the granting of a permit by the Board.[93] The permit can be obtained only upon the

payment of a $500 fee.[94] Further, the right of the firm or corporation to construct such a facility is subject to certain overriding interests - the paramount right of the United States to control commerce and navigation; the right of the public to the free use of navigable waters, and the general restrictions and prohibitions contained in section 81 of the Mississippi Constitution of 1890.[95]

Once actual drilling is begun, no stratum upon being penetrated may be drilled further or left open without first being sealed to prevent the escape of oil or gas while additonal drilling in or through that stratum is continuing, unless permission is granted by the State Oil and Gas Supervisor. Fresh water too must be confined to its respective strata and protected. Before the completion of any oil or gas well as a producer, all strata both above and below the producing horizon must be sealed in order to prevent their contents from passing into another stratum.[96] The Board has established standards for the construction of surface casing and producing casing so that oil and gas bearing pools may be protected.[97] Minimum requirements and tests to determine compliance with casing standards have also been provided.[98]

No well may be drilled across unit lines except on permission from the Board. Also, no well may be directionally deviated from its normal course without authorization from the Board, except for short distance deviations. The Board may inspect any deviated well or any other well and impose penalties to adjust possible inequities. All producing wells located within three hundred (300) feet of any drilling unit line that reach a depth of four thousand (4000) feet or more must have directional surveys made.[99] The Board also has the power to require bottom hole pressure surveys of any pools within the state at such times as it may designate. These

surveys must be reported to the Board.[100]

Any well drilled which is discovered to be a dry hole, or any well which ceases production must be mudded and cemented. Before plugging is begun the owner must notify the Board and receive a plugging permit.[101] The Board had designed standard procedures for plugging abandoned holes or wells which must be adhered to.[102] Before a well drilled for exploratory purposes which penetrated below all fresh water strata is abandoned, the owner or driller of the hole must plug it in such a manner as to protect all fresh water bearing strata, and record the plugging procedure with the Board.[103] However, if the well to be plugged is suitable for use as a fresh water well, the well need not be plugged above the required sealing plug set below the fresh water level. Written authority for such a well must be secured from the landowner and filed with the Board.[104]

In drilling areas where high pressures are likely to exist and on all wildcat wells, all proper and necessary precautions must be taken to keep wells under control, including the utilization of blowout preventers and high pressure fittings.[105] Any material or commodity that might constitute a fire hazard not used in operation of a well must be stored at least one hundred (100) feet from all wells and vessels in which oil is stored. Oil may not be stored in earthen reservoirs or open receptacles. Too, open hole drill stem tests and swabbing of wells into production must be confined to daylight hours for fire safety purposes.[106] Should a fire, break, leak, or blowout occur in any oil or gas well, pipeline, receiving or storage facility, the person operating it must notify the Board, listing all damage and proposing possible remedial procedures.[107]

Vacuum pumps and any other air-lift devices installed for the purpose of

of placing a gas or oil bearing pool under a vacuum are prohibited, unless approved by the Board.[108] The Board has provided specifications for all well head connections, and stipulated that each flowing well must be filtered through an oil and gas separator or treater. Each flowing well is also required to be equipped with an adequate choke to properly control the flowing of the well.[109]

These technical requirements, covering all the various aspects of oil and gas production in the state, are the means by which the goals of the oil and gas conservation laws of Mississippi are met.

C. MUNICIPALITIES

Counties and municipalities of the State of Mississippi are empowered by the legislature to lease any lands or minerals owned by that county or municipality for oil, gas, or mineral development on whatever terms and conditions and for whatever consideration the board of supervisors, mayor and aldermen, or mayor and councilmen in their discretion deem advisable and proper.[110] Further, the trustees of agricultural high schools and junior colleges, with the consent of the board of supervisors of the affected county or counties, are authorized to lease lands belonging to them for purposes of exploring and drilling for oil, gas, and other minerals.[111] The board of trustees of any school district is authorized to lease lands owned by that school district for oil, gas, and mineral explorations and development.[112]

The lessee under such a lease has the statutory power to enter upon the land and explore and develop and do all things necessary for the production and preservation of any petroleum products.[113] Any oil, gas or mineral lease granted

by a county or municipality may provide that the lessee has the right and power to pool and consolidate the land covered by that lease - in its entirety or as to any stratum or strata or any portion or portions thereof, for the purpose of joint development of the entire consolidated premises as a unit.[114] Too, the Land Commission, with the approval of the governor, may contract to sell any forfeited state tax lands, including those within municipalities. The purchaser under the contract must agree not to permit any waste of any kind upon the land nor allow any other person to commit waste until the purchaser has secured a patent from the state in accordance with his contract.[115]

All municipalities which own or operate a natural gas system are authorized to supply gas to customers who live outside the corporate limits of the municipality, provided that those customers reside within five miles of the corporate limits. Gas may also be supplied outside the five mile radius to customers who live from 5-11 miles from the corporate limits of municipalities having a population of less than one thousand (1000) under certain circumstances. If, within the county in which the municipality is located there exist at least two natural gas transmission lines and two gas compressor stations which are engaged in rendering service in interstate commerce, and if the proposed natural gas transmission line of the municipality can be laid wholly in alluvial, then where it is necessary for the municipality to lay a gas transmission line of from 5-11 miles from the corporate limits to the nearest point at which a supply of gas can be obtained, the municipality may provide a gas supply to customers outside the corporate limits who live within one half mile of the line, providing that there are at least two hundred (200) potential

customers so situated. These customers may not be charged at more than twice the rate by customers within the city.[116]

The governing body of any municipality may force the removal of any anhydrous ammonia storage plant located within its corporate limits if the plant is found, after a hearing, to be in any manner unsafe. The decision of the governing body may be appealed by any aggrieved party to the circuit court of the county in which the municipality is located. The State Board of Health also possesses the power to investigate any anhydrous ammonia plant in the state if the plant causes complaints that it is in the nature of a nuisance, health or property hazard. If, after investigation and a hearing the complaints are found to be valid, the Board of Health will immediately condemn the plant. Such a condemnation necessitates a removal of the plant within ninety (90) days to a location approved by the Board of Health. If the owner is unable to relocate to the satisfaction of the Board of Health, the plant must be emptied and closed.[117]

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)]

1. § 53-3-117.

2. § 53-1-5.

3. § 53-1-7.

4. §§ 53-3-17, 53-1-33.

5. See, § 53-1-17(c).

6. § 53-1-17(c) (1-15).

7. Order No. 201-51, Rule 5 (Oil and Gas Board, 1951).

8. Id., Rule 1.

9. Id., Rules 1, 58.

10. Id., Rule 3.

11. § 53-1-21.

12. § 53-1-23.

13. § 53-1-5.

14. § 53-1-29.

15. § 53-1-35.

16. Order No. 201-51, Rule 33 (Oil and Gas Board, 1951).

17. § 53-1-19.

18. § 53-1-39.

19. § 53-3-119.

20. § 53-1-39.

21. § 53-1-45.

22. See Executive Order No. 73 (Sept. 28, 1970).

23. § 53-1-47(a).

24. § 53-1-47(b)(c).

25. § 53-3-17.

26. § 53-1-43.

27. Order No. 201-51, Rule 52 (Oil and Gas Board, 1951).

28. § 49-17-29.

29. § 53-3-19.

30. See, e.g., Order No. 201-51, Rule 57 (Oil and Gas Board, 1951), as amended by Order No. 118-58 (Oil and Gas Board, 1958), which designates forms adopted by the Board and which must be used in making reports to the Board.

31. § 53-3-11.

32. Order No. 201-51, Rule 4 (Oil and Gas Board, 1951), as amended by Order No. 216-70 (Oil and Gas Board, 1970).

33. Id., § 53-3-13.

34. § 53-3-13.

35. Id.; Order No. 201-51, Rule 5 (Oil and Gas Board, 1951), as amended by Order No. 156-66 (Oil and Gas Board, 1966).

36. Id.

37. Order No. 201-51, Rule 4 (Oil and Gas Board, 1951), as amended by Order No. 216-70 (Oil and Gas Board, 1970).

38. Order No. 201-51, Rule 44 (Oil and Gas Board, 1951).

39. Order No. 201-51, Rule 45 (Oil and Gas Board, 1951), as amended by Order No. 118-58 (Oil and Gas Board, 1958).

40. § 53-3-71.

41. § 53-3-73.

42. Order No. 201-51, Rule 6 (Oil and Gas Board, 1951).

43. Order No. 201-51, Rule 23 (Oil and Gas Board, 1951), as amended by Order No. 118-58 (Oil and Gas Board, 1958).

44. Order No. 201-51, Rule 17 (Oil and Gas Board, 1951).

45. Order No. 201-51, Rule 15 (Oil and Gas Board, 1951), as amended by Order No. 27-68 (Oil and Gas Board, 1968).

46. Order No. 201-51, Rule 37 (Oil and Gas Board, 1951); § 53-3-15.

47. Order No. 201=51, Rule 39 (Oil and Gas Board, 1951).

48. Id., Rule 42.

49. Id., Rule 43.

50. See Order No. 201-51, Rule 54 (Oil and Gas Board, 1951), for the specific information which must be filed with the Board.

51. Order No. 201-51, Rule 46 (Oil and Gas Board, 1951).

52. Id., Rule 47.

53. Id., Rule 51.

54. Id., Rule 53.

55. Id., Rule 36.

56. Id., Rules 25, 26, as amended by Order No. 118-58 (Oil and Gas Board, 1958).

57. Order No. 201-51, Rule 27 (Oil and Gas Board, 1951).

58. Id., Rule 30.

59. Id., Rule 31, as amended by Order No. 118-58 (Oil and Gas Board, 1958).

60.

61. Order No. 331-62 (Oil and Gas Board, 1962); § 53-1-75.

62. § 53-1-77.

63. § 53-1-71.

64. § 53-3-3, characterizes waste per se as unlawful. Any waste is unlawful waste.

65. Order No. 201-51, Rule 32 (Oil and Gas Board, 1951).

66. § 53-3-5.

67. Order No. 201-51, Rule 55 (Oil and Gas Board, 1951).

68. Id., Rule 56.

69. Id., Rule 49.

70. Id.

71. Id., Rule 48.

72. § 53-3-5(c).

73. See Order No. 201-51, Rule 7 (Oil and Gas Board, 1951), as amended by Order No. 243-69 (Oil and Gas Board, 1969); and Order 201-51, Rule 8 (Oil and Gas Board, 1951) as amended by Order No. 244-69 (Oil and Gas Board, 1969).

74. Order No. 201-51, Rule 9 (Oil and Gas Board, 1951).

75. Id.; § 53-3-5(c).

76. § 53-3-5(d).

77. Order No. 201-51, Rule 41 (Oil and Gas Board, 1951), as amended by Order No. 197-59 (Oil and Gas Board, 1959).

78. § 53-3-5(d).

79. Id., § 53-3-5(c).

80. Id.

81. Id.

82. § 53-3-23.

83. § 53-3-7(a).

84. Id., § 53-3-7(b).

85. Id., § 53-3-7(e).

86. Id., § 53-3-7(c).

87. Id., § 53-3-7(d).

88. § 53-3-9.

89. Order No. 201-51, Rule 35 (Oil and Gas Board, 1951), as amended by Order No. 187-65 (Oil and Gas Board, 1965).

90. Order No. 201-51, Rule 40 (Oil and Gas Board, 1951), as amended by Order No. 25-65 (Oil and Gas Board, 1965).

91. Order No. 201-51, Rule 34 (Oil and Gas Board, 1951), as amended by Order No. 231-59 (Oil and Gas Board, 1959).

92. § 53-3-9(c).

93. § 53-3-71.

94. § 53-3-73.

95. § 53-3-75.

96. Order No. 201-51, Rule 10 (Oil and Gas Board, 1951).

97. See Prder Mp/ 201-51, Rule 11 (Oil and Gas Board, 1951); and Order No. 201-51, Rule 12 (Oil and Gas Board, 1951), as amended by Order No. 118-58 (Oil and Gas Board, 1958).

98. Id.

99. Order No. 201-51, Rule 14 (Oil and Gas Board, 1951).

100. Id., Rule 38.

101. Id., Rule 27.

102. See Order No. 201-51, Rule 28 (Oil and Gas Board, 1951), for outline of correct procedure to be used in plugging abandoned wells and holes.

103. Order No. 201-51, Rule 29 (Oil and Gas Board, 1951).

104. Id., Rule 30.

105. Id., Rule 13.

106. Id., Rule 16, as amended by Order No. 28-68 (Oil and Gas Board, 1968).

107. Order No. 201-51, Rule 17 (Oil and Gas Board, 1951).

108. Id., Rule 22.

109. See Order No. 201-51, Rules 18, 19 and 20 (Oil and Gas Board, 1951).

110. § 17-9-1.

111. § 37-27-29.

112. § 37-7-305.

113. § 29-3-101.

114. § 17-9-5.

115. § 29-1-39.

116. See § 21-27-39.

117. § 75-57-31.

MUNICIPALITIES

As a general proposition, municipalities have been empowered by the legislature to promote industry and utilize the natural resources of the state. Paradoxically, municipal power in the development of natural resources can only be exercised after the municipality has obtained from the State A & I Board a certificate of public convenience and necessity.[1] Applications by municipalities for industrial parks which have as their goal the future development of natural resources are evaluated by the A & I Board on the basis of whether sufficient natural resources already exist within the municipality.[2]

The governing body of any municipality which owns or operates a gas producing or distributing system,[3] or which desires to construct such a system, has legislative authorization to create a utilities commission to control and manage the system. The commission has a stipulated size of three to five members, who are selected by the governing body of the municipality, and once created has the power to control and operate the activities and facilities of the gas system both within and without the municipality.[4] In the event that the municipality operates under the council manager form of government, the members of the commission are to be selected by and under the control of the mayor and councilmen of the municipality and not the city or town manager.[5]

In order to insure the safe and economical operation of the system,

the commission may enact by-laws and regulations which have the same validity as ordinances promulgated by the governing body of the municipality.[6] The commission is additionally charged with the responsibility of keeping an accurate account and record of gas and oil services furnished to all departments of the municipality.[7] The governing authority of the municipality may remove any commissioner for cause, but may not abolish or diminish the power of the commission once it is established. Such an abolition or diminution may only be accomplished by the vote of a majority of the qualified electors of the municipality at a special election called for that purpose.[8] The governing body of the municipality does retain the power to inspect the facilities of the commission in order to determine whether the machinery and premises are being maintained in a condition which complies with the requirements of the franchise under which the system is operating. Refusal to permit inspection by the municipal authorities immediately upon their request results in a $1,000 fine for each refusal.[9] Further, upon a complaint by a citizen, the governing authority of the municipality may test the gas meter furnished by any individual or company to the municipality or its inhabitants. If the tests reveal a violation of the contract between the municipality and the individual or company, the expenses of the testing shall be charged to the violating company or individual and further penalties may be imposed as the municipal ordinances provide.[10] Free gas services may not be rendered to any private person, firm, or corporation, but the municipality may furnish free services to the municipality itself or to any hospital or benevolent institution located within the municipality, including county, city or community fairs.[11]

Rates charged by any gas system constructed or operated by a municipality or operating under a franchise issued by a municipality are not subject to regulation by any state agency. Also, the municipality need not obtain a franchise or permit from the state in order to extend or construct a system.[12] All monies derived by the commission from any source other than the issuance of bonds must be devoted to the payment of all expenses incurred by the operation of the system. Money required for sales development, the creation and maintenance of a cash working fund, and a surplus fund to be used for the replacement and extension of existing systems and emergencies are all considered expenses toward which the commission may regularly devote income.[13] The legislature has established a priority of fund allocation which must be followed by the municipality in its utilization of income earned by the gas system. Operating and maintenance costs are required to be met first. Then, additional money may be applied to the depreciation fund, the bond and interest fund, and the contingent fund, in that order. Any further surplus may be distributed by the municipality in its considered best judgment.[14] In the discretion of the municipality, revenue surpluses may also be shuttled into other special funds or systems in the same order of allocation as that provided for the primary system.[15]

In order to construct, operate, and maintain a gas system, a municipality may borrow money or issue revenue bonds. Bonds issued for the benefit of a system are to be repaid solely from the revenues of that system, out of the bond and interest fund.[16] Nevertheless, no bonds may be issued until a majority of those qualified electors of the municipality have approved

the issuance at a special election called for that purpose. The proposition on which the electors must vote should state in general terms the maximum amount of the bonds, together with their purpose. A different procedure is outlined for issuing bonds which merely improve or extend an existing system.[17] Any municipality which does issue revenue bonds must of course maintain proper books of record separate from other municipal records in which entries must be kept of all transactions which affect the business, properties, or affairs of the system involved in the issuing of the bonds. These records are open to inspection during business hours by the general public.[18]

Municipalities which have outstanding bonds issued for the benefit of a gas system must maintain rates in the services offered by the system sufficient to maintain an interest and bond redemption fund large enough to repay the interest and principal on the bonds as they become due. These rates must be fixed by a separate ordinance promulgated at the time of the issuance of the bonds and are subject to revision at any time.[19] The governing body of the municipality may provide for the calling in of the bonds at any interest payment date before redemption, provided that the municipality has in its bond and interest fund extra unappropriated money in excess of the bond interest and principal requirements for the next two succeeding calendar or fiscal years.[20] Should a municipality which has bonds still outstanding wish to issue additional bonds, the legislature has authorized the municipality to issue refunding bonds for the purpose of buying up and redeeming the outstanding ones.[21]

Whenever any bond or other form of indebtedness is issued which is to be repayable solely from the revenues derived from one system, the municipality may obligate itself to subscribe to a stated minimum of the services to be provided by that system, and to pay a stated minimum rate for that service. The obligation may not run for a longer period of time than the life of the bonds and is considered to be a contract between the municipality and the holders of the bonds.[22]

In addition to issuing bonds, a municipality which owns or operates a gas system has the authority through its utility commission to borrow money or issue negotiable notes in an amount not to exceed 5 per cent of the gross revenues of the system in the last preceding fiscal year. Money obtained in this manner must be employed in repairing or extending the existing system and approval by the electorate is not necessary. The money so borrowed must be repaid within 3 years, and at no time may the amount of money borrowed without voter approval exceed 15 percent of the gross revenues of the system for the last preceding fiscal year.[23] However, the municipality is not barred from using money derived from another source other than the operation of the system in paying any immediate expenses in the operation or maintenance of the system.[24] Too, all monies obtained by the leasing of oil, gas, or mineral lands by the municipality may be spent for any purpose.[25]

As an expression of the public policy of the state toward oil, gas, and mineral resources, the legislature has established an apparatus for the conduction of a statewide geological survey. A five-member board appointed

by the governor to 4 year staggered terms, is to oversee the survey.[26] The general purpose of the project is to examine the mineral resources of the state, particularly petroleum and natural gas. Surveyors operating under the direction of the board are to author studies and reports on constructional materials and their value, and to prepare geological, topographical, and economic maps which illustrate these resources. The preparation of special reports embracing a general and detailed description of the natural resources of the state is also within the province of the survey.[27] Regular and special illustrated reports are to be printed at the discretion of the board and sold as scientific interest dictates. Monies received from the sale of these reports are paid to the State Geological Publications Fund.[28] Solely for the purpose of conducting a survey, employees of the board may enter upon all lands within the state.[29]

At each regular session of the legislature, board members are required to report to the legislators, outlining the progress and condition of the survey, together with any other pertinent and useful information.[30] Whenever advisable, the board may confer and cooperate with the United States Geological Survey or other federal agencies in publishing results of topographical, geological, and hydrographical surveys.[31] County supervisors, aldermen of municipalities, and governing bodies of any governmental subdivision of the state have been authorized by the legislature to spend from their general funds any amount up to the estimated cost of the survey for a survey of the subdivision. The survey is to include exploring, mapping, testing, and publishing reports of mineral and natural resources of the area, as well as advising as to the quality, quantity,

and utilization of mineral resources within the subdivision.[32] Two or more governmental subdivisions may cooperate and share the cost of a survey for both their areas.[33] The actual payment to the surveyors by the governmental entities may be made during the performance of the survey. However, such payments may not exceed 90 percent of the total estimated cost, until the survey is completed and approved by the governing body which authorized the survey.[34]

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)]

1. § 57-3-3.
2. § 57-5-13.
3. § 21-29-11(b).
4. § 21-27-13.
5. Id.
6. § 21-27-17.
7. § 21-27-21.
8. § 21-27-15.
9. § 21-27-37.
10. § 21-27-9.
11. § 21-27-27.
12. § 21-27-29.
13. § 21-27-19.
14. § 21-27-57.
15. § 21-27-61.
16. § 21-27-57.
17. § 21-27-43.
18. § 21-27-31.
19. § 21-27-47.
20. § 21-27-57.
21. § 21-27-51.
22. § 21-27-49.

23. § 21-27-25.

24. § 21-27-59.

25. § 29-3-111.

26. § 53-5-1.

27. § 53-5-7.

28. § 53-5-11.

29. § 53-5-13.

30. § 53-5-9.

31. § 53-5-18.

32. § 53-5-17.

33. § 53-5-19.

34. § 53-5-21.

OIL AND GAS

D. UNITIZATION

The Oil and Gas Board holds hearings on all applications for unitized operation of an entire pool or field.[1] Before such a hearing 30 days notice must be given.[2] The Board may order unitization if it finds:

(a) it is necessary in order to effectively carry on secondary recovery methods or any other forms of joint effort to increase ultimate recovery of oil and gas.

(b) it is feasible and will prevent waste or will with reasonable probability result in recovery of more oil and gas.

(c) that the agreements are fair and reasonable under the circumstances and protects the rights of all the interested parties.

(d) the correlative rights of interested parties will be protected.

(e) the additional cost for unitization will not exceed the estimated additional recovery of oil and gas and will not be borne by the royalty owners.

(f) that the operators of a unit have drilled a sufficient number of wells to a sufficient depth and at such locations "so that the Board will approve the unit". The Board may waive the requirement that each drilling unit be drilled when it would not be economically feasible.[3]

The order of unitization must include the following:

(a) a description of the geographical area and the pool(s).

(b) a statement of the nature of the operation contemplated.

(c) a formula for allocation among separately owned tracts, this formula must permit all owners to receive their fair, equitable share of the unit production. The fair and equitable share must reflect engineering, geological, and operating cost factors.

(d) a provision for adjustment among the owners of the unit area (not including royalty owners) of their respective investment in wells, tanks, pumps, machinery, materials and equipment. The unit owners shall determine the amount to be charged for such items. If they cannot agree then the Board will decide. The amount charged against the owner of a separately owned tract shall be considered expense of the unit operation chargeable against the tract, this adjustment may be treated separately. The expense of dry holes drilled within the unit area before the effective date of the order are not chargeable as an investment unless the dry hole is used in the unit operation.

(e) a provision that the costs and expenses of a unit operation will be borne by the owner(s) of each tract proportionally. When an owner fails to pay his part, the owners interest may be foreclosed in the same manner and procedure as in chancery court.

(f) a provision for selecting a successor to the unit operator and regulating the conduct of all unit operations by the unit operator.

(g) the time of commencement and termination of unit production.

(h) a requirement that all oil and gas contained in the unit area will

be produced and sold as rapidly as possible without decreasing the ultimate recovery or damaging the reservoir.[4]

The unit operation becomes effective only after the plan for unitization has been approved by the owners of 85 per cent of the interest on the basis of surface acreage content. If the required percentage can not be reached within 12 months from the date of the order it is automatically revoked.[5]

The Board may enlarge the unit area by approving agreements adding a pool(s) to the unit operations. Such orders become operative at 7:00 AM on the first day of the month next following the day on which the order became effective. Such an order will not be issued unless: (1) all of the terms of the planned unitization and the unitization agreement relating to the extension to the unit operation have been satisfied with supporting evidence (2) the extension has been agreed to by 85 per cent of the royalty interest owners (3) the owners of the existing unit have agreed, in accordance with the terms of the unitization agreement, to the extension. The cost and expenses of operation of the enlarged unit are divided as before.[6]

A portion of unit production allocated to a separately owned tract within the unit area shall be treated as coming from a separately owned tract in the unit area. When oil and gas leases contain land partially within and partially without a unit area the unit agreement shall have no force or effect on the lands lying outside the unit area. Failure of the lessee(s) (of lands outside the unit area) to drill and develop such lands within one year from the date of determination of the unit area will cause the lease to fail as to those lands.[7]

After the effective date of unitization the unit operator or his delegate is the sole lawful operator of the well.[8]

E. POLLUTION BY OIL.

The Air and Water Pollution Control Commission may enter public or private land to inspect and investigate any pollution.[9] Anyone who pollutes the waters or air of this state is guilty of an unlawful act.[10]

F. OIL AND GAS STORAGE.

The Oil and Gas Board is charged with the duty of issuing rules and regulations protecting against pollution from underground storage reservoirs.[11] Any underground storage reservoir must be approved by the board. The approval is based on the following findings:

(a) the storage must be suitable and feasable and in the public interest, the storage area must not be capable of commercial production

(b) the majority of the mineral and surface interest owners must approve

(c) the use of the storage area must not contaminate other formations containing fresh water, oil, gas, etc.

(d) the proposed storage area must not endanger lives or property.[12]

The underground storage of oil and gas is for the public interest,[13] and such storage in offshore waters is prohibited.[14]

Anyone storing oil within the state must furnish a monthly report to the Oil and Gas Board showing all information relating to the stored oil.[15]

Any company organized for the construction of pipelines or other appliances for distributing oil or gas to underground storage areas may exercise eminent domain on surface or sub-surface lands needed.[16] This power of eminent domain is subject to the Oil and Gas Board's approval

limited as follows:

(a) no gas bearing sand, stratume or formation is subject to eminent domain unless the board is satisfied that the sand has greater value for gas storage.

(b) the company must provide adequate and fair compensation for any native gas which is taken that is capable of being commercially produced.

(c) no rights or interest in an underground reservoir acquired for injection, storage or withdrawal of natural gas by a party who has eminent rights with the approval of the board shall be subject to appropriation.[17]

The rights of condemnation granted to pipeline operators shall be without prejudice to the rights of the landowners. The landowners may drill and make other use of the land as long as the underground storage is protected.[18]

G. STATE LANDS.

1. Mineral Lease Commission.

All municipalities in this state can sell, lease or otherwise dispose of any municipally owned oil and gas on such terms and conditions and with such safeguards as best promote and protect the public interest.[19] Notice of such a transfer and the terms thereof must be approved by the voters of the municipality in an election.[20]

If a county or municipality wishes to only lease lands for oil and gas development this may be done with only the approval of the board of supervisors or the mayor and aldermen.[21] The boards and officers of all political sub-

divisions are authorized to enter into agreements to establish and carry out the co-operative development of oil and gas and the development and operation of common accumulations of oil and gas. Such agreements may include secondary as well as primary recovery.[22]

There shall be a Mineral Lease Commission composed of the governor, attorney general, state land commissioner, state treasurer and the state oil and gas supervisor.[23] This commission is authorized to lease lands owned (including submerged lands or lands within the tide ebbs and flows) by the state to any reputable person, association, or company for oil, gas or other minerals.[24] They may not lease 16th section school lands, lieu lands or forfeited tax lands subject to lawful redemption.[25] When the lease is for oil and gas such contracts may be for no more than 7/8 of the production.[26] All monies received from the leases shall be put into the state treasury.[27] When state land is within a defined proven oil/gas field and the same is subject to waste or dissipation and the land is so situated that the production is needed or useful to the state or the state needs to drill to protect its mineral resources, the commission may lease for a special purpose or it may drill under its own discretion and employ such drillers and hire any machinery needed.[28] The commission shall have the power of eminent domain to gain any land for the pipeline.[29]

Any land eminent domained by the Mississippi Coast Coliseum Commission for construction does not give its mineral rights, they remain in the Mineral Lease Commission.[30]

The Mineral Lease Commission may not contact or incur any liability in excess of the amount appropriated for any of the purposes specified in the Act. The commission has full discretion to dispose of appropriated funds as deemed to be in the best interest of the state.[31]

2. Other Authorized Agencies.

In leases of 16th section lands made by the Board of Supervisors the title to oil and gas shall be reserved.[32] The Board of Supervisors with the approval of the Superintendent of Education is authorized to lease 16th section lands for oil and gas production when such land was included in the Choctaw Purchase.[33]

The Board of Trustees of any school district may lease lands owned by the school district for oil and gas exploration.[34] The lessees have the power to enter the land and to do all things necessary for the production.[35]

The trustees of agricultural high schools and junior colleges with the consent of the Board of Supervisors of the affected county or counties are authorized to lease lands belonging to them for exploring and drilling for oil and gas.[36]

County Port Commissions may lease land held by them but they cannot grant oil and gas leases.[37]

The Game and Fish Commission may not grant oil and gas leases on lands it holds.[38] However, they may contract with any county in which a game and fish management project or hunting and fishing refuge is located for joint operation and maintenance and use revenues from the sale of mineral leases on this land.[39]

Any county which has acquired or conveyed land for a state park and retained the mineral rights may grant mineral leases but the lessee is liable for any resulting damage.[40]

Any land granted to the United States Government for the development of a Gulf Islands National Seashore Park shall retain the mineral rights in the state.[41]

3. Unitization Agreements.

The governing authorities of municipalities can aid in the establishment of gas works.[42]

4. Operation of Wells by State.

When any state land, known to be within a proven oil or gas field, is subject to waste, and it is so located that the products can be profitably used in state owned buildings or the state needs to drill to protect its interest, the Mineral Lease Commission may make contracts for such purposes.[43] The contracts must be let in accordance with state law.[44] The commission may sell any surplus oil and gas or exchange it by reciprocal agreement, provided no disposition is made for less than the market price.[45]

H. PIPELINES.

1. Easements for Pipelines.

The Pearl River Basin Development District can acquire easements or rights of way in or outside of a project area for the relocation of gas pipelines.[46]

Municipalities are authorized to borrow money and issue bonds to acquire or improve any gas producing, gas generating, gas transmission or gas distri-

bution system. These systems are to supply the municipality and the persons and corporations, both public and private, within or without its corporate limits. If needed the municipalities are authorized to spend borrowed funds to extend a gas line into another state.[47]

Municipalities are also authorized to grant any person, corporation or association the use of its streets, alleys and public grounds for laying, constructing, repairing and maintaining pipelines used for transporting oil and gas. No such privilege can be granted for longer than 25 years, nor can an exclusive privilege be granted.[48]

The Mineral Lease Commission can contract for the construction and operation of a state owned pipeline for transporting of state owned oil and gas. When it is in the best interest of the state they may exercise eminent domain when necessary for such construction.[49]

The Land Commissioner may grant easements for the construction of pipelines in, on, under or across all state owned land (including submerged lands) to any person, firm or corporation constructing or operating a refinery for oil, gas or petroleum products for any consideration the Commissioner deems proper, subject to the approval of the governor and the attorney general.[50]

Upon obtaining approval of the Oil and Gas Board any company organized to construct pipelines may exercise eminent domain.[51]

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)]

1. § 53-3-101.
2. § 53-3-115.
3. § 6132-102 (Supp. 1972).
4. Id., § 6132-103.
5. § 53-3-107.
6. § 53-3-109.
7. § 6132-106 (Supp. 1972).
8. § 53-3-113.
9. § 49-17-21.
10. § 49-17-29.
11. § 53-3-157. See Miss. Code Ann. § 53-3-151 for definitions.
12. § 53-3-155.
13. § 53-3-153.
14. § 53-3-165.
15. Oil and Gas Board Order 201-51 (1951).
16. § 53-3-159.
17. Id.
18. § 53-3-161.
19. § 21-27-33.
20. Id.
21. § 17-9-1.
22. § 53-3-51.
23. § 29-7-1.

24. § 29-7-3.

25. Id.

26. Id.

27. § 29-7-13.

28. § 29-7-5.

29. § 29-7-7.

30. Chapter 530, Laws of 1968, as amended by chapter 435, Laws of 1972.

31. § 29-7-15.

32. § 29-3-85.

33. § 29-3-99.

34. § 37-7-305.

35. § 29-3-101.

36. § 37-27-29.

37. § 59-1-25.

38. § 49-5-1.

39. § 49-5-15.

40. § 19-7-21.

41. Chapter 482, Laws of 1971.

42. § 21-19-43.

43. § 29-7-5.

44. Id.

45. Id.

46. § 51-11-13(d).

47. § 21-27-23.

48. § 21-27-5.

49. § 29-7-50.

50. § 29-1-101.

51. § 53-3-159.

II. SAND AND GRAVEL

Before the discovery of oil and gas in commercial quantities in this state, there was little question that a grant or reservation of "all minerals" or "other minerals" included a reservation or grant or rights to commercial sand and gravel. During this period the demand for commercial sand and gravel was high, and as the existence of oil and gas was unknown in this state, there was little else a mineral reservation could mean. With the discovery of oil and gas, however, conditions have changed and grantors and grantees have since been extremely oil and gas conscious in the execution of conveyances and mineral leases.[1] It has not been judicially declared as a matter of law that a grant or reservation of rights to "oil, gas and other minerals," refers to oil, gas and other minerals of like kind and character which are not part of the soil, even though there is commercial sand and gravel on the land involved.[2] Thus, sand and gravel are not ordinarily included in mineral leases unless specific reference is made to them.[3]

Because of this development, the statutes dealing with the disposition of state, county and municipal lands is somewhat ambiguous with regard to the sand and gravel existing on those lands. Although there seems to be a general rule that unless otherwise specified, sand and gravel stay with title, several instances arise where it does not seem likely that such would be the intention of the parties. In attempting to make the coverage below as complete as possible

these ambiguous areas will be identified and possible interpretations will be offered. It should be carefully pointed out that there is no real authority for these suggestions. Without them, however, the coverage of the disposition of sand and gravel would be spotty and incomplete.

There are several state and local entities authorized to sell and lease land for mineral resources including sand and gravel.

On the state level, the Mineral Lease Commission is charged with the duty of protecting and exploiting the natural resources in or under the public lands of the state.[4] The Commission is authorized to lease all state owned lands, including submerged land, to reputable lessees for oil and/or gas, and/or other minerals which may be produced therefrom upon such terms as the commission shall deem proper. Sixteenth section school land, lieu land, and forfeited tax land subject to redemption are excluded from this section. In all such leases, the state shall retain a 1/8th royalty in all production.[5]

CAVEAT: It is assumed here that the commission does have the power to lease or retain the rights to sand and gravel as they see fit, but such will not be included in a general lease for oil, gas, and other minerals unless specified.

The commission may lease the submerged beds of sand and gravel on such basis as it deems proper, but where the waters lie between this state and an adjoining state, there must be a cash realization to this state, including taxes paid for such sand and gravel, equal to that being had by such adjoining state.[6]

The Board of Supervisors of each county and the governing authorities

of each municipal corporation are authroized, in their discretion, to lease all lands or minerals owned by the county or municipality for oil, gas and mineral development upon such terms as they shall deem advisable. No such lease shall be made for royalties of less than 1/10th on all minerals mined and marketed other than oil, gas, and sulphur.[7] CAVEAT: Again it is assumed the power exists to grant or retain sand or gravel as seen fit. This power does not extend to 16th section or lieu lands.

In all leases of 16th section land made by the board of supervisors, title to all minerals on such lands shall be reserved.[8] (CAVEAT: it is assumed this would include sand and gravel). The board of supervisors have the right to lease such mineral rights for development.[9] (CAVEAT: here it would be assumed sand and gravel is not included unless specified). The board is authorized to sell gravel on such 16th section lands under their control. No sale of sand or gravel shall be made until notice of same shall have been published once a week for 3 consecutive weeks in at least one newspaper published in the county. If no newspaper is published in such county, then notice shall be given in some newspaper having a general circulation in the county and, in addition, by posting a copy of the notice for at least 2 days next preceding the sale at three public places in such county. The funds arising from the sale shall be credited to the proper township, and the county depository shall keep a separate account with each township.[10]

In counties lying in the DeSoto National Forest area and the Homochitto National Forest area and wherein there is situated any part of said Forests, or counties adjacent to the Mississippi River in which there is located a Negro

land grant college, and in counties which border on a county in the DeSoto National Forest and which also border on the State of Alabama, the board of supervisors of each respective county may grant the purchaser of sand and gravel a term not exceeding 10 years to mine and remove the same. Every right to removal shall expire upon the failure to remove any sand or gravel for a period of one year. No sale of any sand or gravel shall be made until notice has been given as mentioned above.[11]

The board of supervisors of any county, upon the approval of the county superintendent of education, is authorized to lease 16th section lands, where such land was included in the Choctaw Purchase, or the lands held in lieu no matter where they are located, for oil, gas and minerals upon such terms as the board deems advisable. In these leases, however, sand and gravel are specifically exempted.[12]

All lieu land located outside of the county owning it, shall be sold in accordance with statutory provisions.[13] One-half of all oil and mineral rights in and to these lieu lands shall be retained by the lieu land commission and shall remain the property of the township owning the lieu land.[14] CAVEAT: Here is where the greatest ambiguity in the term "mineral" is found. In the coastal counties it is likely that commercial sand and gravel will be a greater "mineral" asset than oil, gas and hydrocarbons. Yet if the term mineral rights is given its general meaning, the state will have no claim to one-half the sand and gravel produced from these lands. Though no exception to the general rule is indicated, it is unlikely this would be the intention of the state.

Railroad corporations, except as limited by federal regulations, have the

privilege to enter upon lands adjacent to its right-of-way for the purpose of quarrying and carrying away any gravel which is necessary for repairing or changing the railroad; but in all cases compensation shall be given to the owner either as agreed upon or in accordance with eminent domain statutes.[15]

The road commissioner, overseer or contractor of a road on which is to be erected a bridge or roadway has the authority to take from the nearby lands gravel or road materials necessary for the work. The board of supervisors of the county must assess the value of the material taken and must pay or tender the value to the owner by warrant on the county treasury.[16] Also, the Land Commissioner, with the approval of the Governor, is authorized to sell, lease or donate to the State Highway Commission, or to any county any public land of the state which may be used or be useful in the construction or maintenance of state, federal and county highways.[17] Any county or road district operating under a state road law is authorized to purchase or lease any land containing sand or gravel to be used in the construction and maintenance of roads and is authorized to sell any such material in excess of its own needs. No purchase is to be made except with the consent of the board of supervisors.[18]

On April 1, 1958 water usage became the subject of legislative controls.[19] The act, however, was not applicable to the dredging and washing of sand and gravel.[20] The Board of Water Commissioners, to implement its policies created water districts with the power to acquire land. The provisions as to the disposition of sand and gravel in such acquisitions varies slightly with the different districts. In acquisitions by the Pat Harrison Waterway District, the Tombigbee River Valley Water Management District, and the Big Black River Basin District,

the districts shall not acquire minerals or royalties within the project area. Sand and gravel here are not considered as minerals here and are acquired.[21] Likewise, there is a special proviso for the Pearl River Basin Development District and the Lower Yazoo River Basin District that where the land is condemned for easement purposes only, the sand and gravel will be condemned only to the extent necessary, but may be acquired in full by negotiation. No one owning the right to share in production shall be prevented from producing sand and gravel with the necessary right-of-way or other means of transporting such products by reason of the inclusion of such sand and gravel within the project area whether below or above the waterline. Any production activity, however, will be under such regulation as the district's board of directors deem advisable to protect the project.[22]

The Urban Flood and Drainage Control System is similar to the above water control districts in that the system may acquire by condemnation or negotiation any necessary land within the project area but in so doing shall not acquire minerals and royalties. For the purposes of this section, however, sand and gravel are considered as minerals and are therefore not acquired.[23] As in the above Pearl River Basin District and the Lower Yazoo Basin District the owners will not be denied reasonable access to their minerals due to inclusion of such minerals within the system.[24]

The trustees of agricultural high schools and junior colleges with the consent of the Board of Supervisors are authorized to lease lands belonging to them for exploring and producing oil, gas and minerals.[25] The Board of Trustees of a junior college district are authorized to execute oil, gas and mineral leases on any property owned by the Board, subject to a 5 year limitation.[26] Any

county which has acquired and conveyed land for state park purposes and has retained the mineral rights may lease such rights. The written approval of the State Mineral Lease Commission and the Mississippi Board of Park Examiners is required.[27] CAVEAT: None of these statutory provisons make a specific reference to the disposition of sand and gravel. It is assumed that any such sand and gravel may be included in such leases but is not unless specifically mentioned.

Any sale, lease, or other disposition made by the County Port Commissions or land under their jurisdiction shall except oil, gas and other minerals except sand and gravel in and under such land.[28]

The State Geological Survey is charged with the duty of examining the mineral natural resources of the state, viz, constructional materials and their value. The Board may cooperate with the United States Geological Survey or any other federal agency in publishing the results of surveys conducted in the state. The Board shall report to the legislature at each regular session.[29]

Two other state agencies that play a general role relating to mineral resources, including sand and gravel activities, are the Gulf Coast Research Laboratory and the Department of Agriculture. The Gulf Coast Laboratory promotes the study and knowledge of science, including the state's natural resources and provides for the dissemination of research findings.[30] The Department of Agriculture requires other state institutions to furnish accurate information when called upon on the resources under their jurisdiction.[31]

The State Tax Commissioner is authorized to collect any sum of money

due the state by reason of the reservation in tax-forfeited lands of gravel and other minerals.[32]

The tax collector shall transmit to the clerk of the chancery court of the county, separate lists of the lands struck off by him to the state and that sold to individuals.[33] The former owner of such property during the period of redemption shall not have the right to remove any gravel that may be found on the land.[34]

Upon everyone engaged in the business of producing for profit and commercial use, sand and gravel there is levied a tax equal to 5 percent of the gross proceeds of sales or the value of the product whichever is greater.[35] There is also a local privilege tax levied on the producers of sand and gravel.[36] County board of supervisors and municipal authorities are authorized to grant exemptions from ad valorem taxation. Among the new enterprises which may be exempt are all factories for making products in which sand and gravel are used and sand and gravel washing plants.[37]

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)]

1. Witherspoon v. Campbell, 219 Miss. 640, 69 So. 2d 384 (1954).
2. Frostad v. Kitchens, 377 F. 2d 475 (5th Cir. 1967); Witherspoon v. Campbell, 219 Miss. 640, 69 So. 2d 384 (1954).
3. Frostad v. Kitchens, 377 F. 2d 475 (5th Cir. 1967); Harper v. Talledaga Co., 185 So. 2d 388 (1966); Singer v. Tatum, 251 Miss. 661, 171 So. 2d 134 (1965); Cole v. Berry, 245 Miss. 359, 147 So. 2d 306 (1962); Cole v. McDonald, 236 Miss. 168, 109 So. 2d 168 (1959); Witherspoon v. Campbell, 219 Miss. 640, 69 So. 2d 384 (1954); Moss v. Jourdan, 129 Miss. 598, 92 So. 689 (1922).
4. § 29-7-1.
5. § 29-7-3.
6. Id.
7. §§ 17-9-1 et seq.
8. § 29-3-85.
9. Id.
10. § 29-3-45.
11. § 29-3-95.
12. § 29-3-99.
13. §§ 29-3-15 to 25.
14. § 29-3-21.
15. § 77-9-173.
16. § 65-7-101.
17. § 29-1-77.

18. § 65-7-99.

19. § 51-3-7.

20. § 51-3-5.

21. §§ 51-15-119(L)(1); 51-13-111(e)(1); 51-9-121(f)(1); 51-17-17(d)(1).

22. §§ 51-11-13(d)(1-2); 51-23-17(c)(1-2).

23. § 51-35-315(g)(1).

24. § 51-35-315(g)(2).

25. § 37-27-29.

26. § 37-29-73.

27. § 19-7-21.

28. § 59-1-25.

29. § 53-5-7.

30. § 37-101-21.

31. § 69-1-17.

32. § 29-1-125.

33. § 27-41-81.

34. § 27-41-83.

35. §27-65-15.

36. § 27-17-189.

37. § 27-31-101.

III. TIMBER

A. Regulation and Management.

The agency primarily concerned with timber is the State Forestry Commission. The Commission consists of the Governor and seven (7) state citizens who have knowledge of and interest in the conservation and production of forests and forest products.[1] The duties and powers of the Commission include the appointment of the State Forester, the encouragement of woodcrop production, the investigation and study of forest conditions, the protection and management of forests on state land, and cooperation with governmental officials and individuals so as to best serve the public interest in the protection, replacement and extension of forests in the state.[2]

The Commission must keep itself informed as to the known varieties of insects and pests affecting trees and as to methods of their eradication. Rules shall be made regarding the inspection of timber and timber products, the treatment of infested timber or the dstruction of same and the procedures for eradication of such pests. The Commission may resort to the chancery court for an order enforcing these rules.[3]

Further statutes authorize the Forestry Commission to make available to farm owners and qualifying schools free commercial seedlings providing the farm owner or school enters into a cooperative agreement with the Commission assuring the proper management of such seedlings.[4]

A special commission, related to the Forestry Commission, is created to survey all state owned lands for the purpose of determining the adaptability of such lands for use as State Forests.[5] Also, the Governor is authorized to accept gifts of land to be administered by the Commission and to be held for

possible forestation.[6] The State Forester, as agent for the Commission, is charged with the control of all Commission matters relating to forestry.[7] It is his duty to examine all timbered lands belonging to the state and to report upon the condition of the timber on the land, its value, and its possible conversion to state forests. The Forester is responsible for state forests.[8] The determination as to whether or not the public interest would be served by utilization of such land as state forests or parks, however, lies with the Commission.[9]

It is the duty of the State Land Commissioner to direct the classification of all 16th section lands or lieu lands in the Choctaw purchase. Two classifications may be given: (1) forest lands; (2) other lands. The classification depends upon the suitability of the land to produce a maximum of revenue.[10] Forest lands, here, is defined as all lands of which at least 90 percent of the total area is present forest or wasteland, or which will produce the maximum revenue by utilization to produce timber.[11] There is a limitation on any classification of land as forest land providing that any 16th section land within reasonable proximity to any port, harbor, or waterway and is suitable for use as a port or harbor may be classified as industrial (other) lands.[12] Upon classification, a report is compiled by the land commissioner and filed with the superintendent of education of the county in which the 16th section land is located. Objections to any classification may be filed with the chancery clerk.[13] Also, upon changes of conditions, reclassification of the land may be had.[14] The county board of supervisors shall agree with the state forestry commission for the management of all lands classified as forest lands and of all timber under the control of the board on 16th section or lieu lands which have not been so classified.[15] The agree-

ment shall provide for long-term programs for timber improvement purposes carried out by the forestry commission.[16]

House Bill 459, Chapter 238, Mississippi General Laws, 1944, was passed for the purpose of providing assistance to all woodland and timber landowners in the state including private owners. The direction of the bill is toward better managing and harvesting of timber on all lands suitable therefor, especially privately owned lands.[17] The state forestry commission is authorized to implement the provisions of the act.[18] In order to aid in this, the forestry commission is authorized to organize forest districts throughout the state.[19] It is not certain from reading the Code whether the forest districts provided for here are the same as those set out in section 49-19-1 (i.e. Southeast district: Marion, Lamar, Forrest, Perry, Greene, Pearl River, Stone, George, Hancock, Harrison and Jackson Counties.) A district forester and assistant district forester is appointed for each district to direct forestry education, timber management, and other necessary forestry conservation activities as the forestry commission shall deem necessary.[20]

In keeping with the policy of encouragement of better management and harvesting of timber on privately owned forest lands, the Forest Harvesting Act was passed. As it was believed that only a small portion of the privately owned forests were being managed in accordance with sound forestry practices, the aid of this act was to eliminate waste, inefficiency and destruction of forests in the harvesting of timber and the utilization of timber lands.[21] Specific rules have been promulgated under this act which all agencies concerned with forestry

are duty bound to apply.[22] The rules are: (1) No one shall work new faces for naval store purposes on trees less than ten inches in diameter unless there is left unfaced on each acre being worked one hundred or more well distributed trees four inches in diameter or at least four seed trees of 10 inches in diameter;[23] (2) No one shall cut pine trees for commercial purposes unless there is left standing on each acre of forest land being harvested at least four pine seed trees of ten inches or more in diameter except as provided;[24] (3) No one shall cut for commercial purposes any pine trees under ten inches in diameter unless there is left standing on each acre of land being harvested, one hundred well distributed pine trees four inches in diameter: provided, an operator may submit to the enforcing agency an acceptable plan of management which will assure continued productivity of the area to be harvested in lieu of the above provisions;[25] (4) The same provisions apply to any hardwood tree being harvested except it is required that at least six trees of ten inches in diameter of the commercial species being harvested must remain standing on each acre;[26] (5) Where timber is to be harvested for commercial purposes on lands containing mixed stands of pine and hardwood timber, no one shall cut any timber unless there is left standing on each acre at least four pine seed trees of ten inches in diameter of the species being harvested along with at least two hardwood seed trees of ten inches in diameter of the species being harvested. In the event pine trees predominate, and it is desired that pine trees of less than eight inches in diameter be harvested, rules (2) and (3) shall rule. There shall be no limitation on the amount or size of the hardwood trees harvested.[27] All trees left for seed trees must be thrifty trees of desirable species with well formed crowns, uninjured and as well distributed as possible. Seed trees left standing shall not

be cut except for clearing land for actual cultivation until other trees of the same species and in sufficient number have grown to be eight inches in diameter. Black Jack and scrub oak shall not be considered as seed trees.[28] The above provisions shall not prohibit the clearing of land for cultivation, pasture, building, roads, power lines or similar uses or to individuals cutting timber from their own lands for their own personal use where there is no sale. Nor shall it apply to those special cases where permission is obtained in writing from the state forestry commission for the emergency removal of storm or disease damaged timber.[29] The forestry commission is the agency authorized to make inspection of all forestry lands for compliance with this act.[30] The prohibitions of the Act shall not affect valid timber cutting contracts made prior to its approval.[31]

As part of their program to prevent soil erosion and conserve the water resources of the state, the various water management districts provide for the forestation of lands within the project areas.[32] Any sixteenth section or lieu lands flooded by the activities of any water management district shall be reforested before the project is abandoned.[33]

Private owners of land may file to form a water and soil conservation district under the auspices of the State Soil and Water Conservation Commission. The commissioners of any such district formed shall formulate regulations governing the use of land within the district including requiring observance of particular methods of planting erosion preventing trees.[34]

Owners of forested lands which shall be cut over, denuded or bled for turpentine shall be encouraged to leave standing and unbled an average of one seed tree per acre to promote the natural reforestation of the land.[35] (This

section may possibly be in conflict or may be overridden by the provisions of the Forest Harvesting Act.)

State and county boards of public education must provide proper courses of instruction on the general subject of forestry in all public schools and colleges.[36]

The board of trustees of any Mississippi training school may contract with the forestry commission for the proper management of its forest lands.[37]

As forest products and forests contribute substantially to the total economic outlook in Mississippi, there is a tremendous need for additional knowledge of the basic qualities of forest products, the uses to which they may be put and the techniques of converting them to such uses. Several agencies in the state are concerned with gaining such knowledge and with disseminating it throughout the state. The Forest Products Utilization Laboratory treats most specifically with forests and forest products.[38] The Gulf Coast Research Laboratory deals with all the state's natural resources,[39] and the State Geological Survey reports on all constructional material and prepares maps illustrating the resources of the state.[40] The Council of State Agencies on Agriculture endeavors to coordinate all informational programs within the broad field of agriculture and forestry in order to promulgate plans for a more orderly growth of state enterprises.[41]

If any person goes upon public lands and cuts or injures a tree or damages the tree in any way proscribed by statute, the land commissioner may institute

suit against such person.[42] Any person who trespasses on the land of another and injures any tree thereon where such action does not amount to larceny shall be guilty of a misdemeanor.[43] It is not unlawful to cut a tree in which there is a fox, provided the owner's consent has been given.[44]

B. Forest Fire Protection.

As in the area of forest management, the State Forest Commission is the agency primarily responsible for maintaining such organized means as are necessary to prevent, locate, control and extinguish fires in forests and woodlands.[45] Not only is the commission protector of public lands,[46] but may, through agreement, cooperate in the organization of protection of county and privately owned forests. In order to carry out its programs, the commission is authorized to organize forest districts throughout the state. A district forester and assistant district forester shall be appointed for each district and shall be charged with the duty of directing forest fire control.[47]

The board of supervisors of any county desiring to have the forestry commission carry out organized forest fire control in that county is authorized to levy a special tax known as a forest acreage tax.[48] The revenues from the tax shall be spent by the forestry commission to organize said forest fire controls.[49] In the event 20 percent of the electors of a county wish such levy, the board of supervisors shall hold an election on the proposition. If a majority of those participating vote affirmatively, the board will levy the tax. As an alternative to the forest acreage tax, a qualifying county may pay from its general fund an amount equivalent to the tax.[50] In counties not levying the tax or paying the equivalent, the forest commission is authorized to assist in the organization of volunteer fire

prevention.[51]

The forestry commission is also duty bound to enter into agreements with county boards of supervisors with respect to timber improvements on sixteenth section or lieu lands.[52] Such agreements should provide for the maintaining of fire lanes. The commission, however, in its discretion, may have the option in counties not having a commission fire protection program to recommend a private contractor to perform the work.[53]

Any area within any county, contiguous to but not situated within the corporate boundaries of an existing municipality, and not having adequate fire protection may, incorporate as a fire district. Such district shall only have the power to operate said fire protection system and to make improvements thereon. As long as the district furnishes its requisite services, it shall be the sole public corporation empowered to do so.[54]

Forest fire control is also encouraged among private owners.[55] It is the duty of the state forester, as agent for the forest commission, to cooperate with private owners in aiding them to form protective associations.[56]

The Governor on behalf of the state is authorized to execute compacts with any one or more of the States of Arkansas, Louisiana, Oklahoma, and Texas for the South Centeral Interstate Forest Fire Protection Compact; and the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, Virginia and West Virginia for the Southeastern Interstate Forest Fire Protection Compact.[57] The compacts promote effective forest fire control and prevention within the compacting states by developing integrated forest fire plans, by maintaining adequate forest fire fighting services and by providing mutual aid in fighting forest fires.[58] Upon the executing of any such compact,

the state forester shall act as "compact administer" for this state.[59] It is his duty to do all things necessary in order to effectuate the terms and provisions of the compact.[60]

Any fire on forested land burning uncontrolled is declared a public nuisance.[61] Anyone responsible for such fire is required to control it immediately; upon failure to do so, any organized fire suppression agency recognized by the forestry commission may summarily abate it. The costs of abatement may be recovered from the persons responsible for the fire.[62] If any one sets fire willfully to any woods not his own, he shall be guilty of a felony. If he does so negligently, he shall be guilty of a misdemeanor.[63]

Before any commercial seedlings are distributed by the forestry commission, the receivor must agree to assure the proper management of such seedlings including their protection from fire.

To reduce conflict between the Forestry Commission and the Game and Fish Commission, the former is charged with supervision of all forest lands and parks, while the latter has control of refuges and preserves. Included in the Game and Fish Commission's powers is the power to regulate burning on preserve lands as may be reasonably necessary to reduce the danger of destructive fires.[64]

There is a State Fire Fighting School created for the purpose of training and educating persons engaged in fire protection.[65]

As early detection of forest fires is fundamental in their early control and extinguishment, the highway patrol cooperates with the forestry commission in reporting forest fires.[66]

C. Sale and Lease of Timber on State Lands.

The State Forestry Commission has control of all forests or public parks.[67] The state forester, as agent for the commission, has the duty of examining all timbered lands belonging to the state, reporting on the condition of the timber on the land and its actual value.[68] The forestry commission has the overall authority to make sales of timber produced on such land.[69]

The Mississippi Park System has the authority to dispose of timber standing upon the lands of state parks. Such timber must be sold, however, under the directions of the Forestry Commission in accordance with sound principles of selective cutting, forestry management and conservation.[70] Before any timber may be sold, the Forestry Commission must select and mark the trees to be cut. Scenic beauty and views will be considered in selecting the trees. Any purchaser cutting timber that has not been so marked shall pay double the purchase price for such tree. All sales shall be made by bids filed with the superintendent of the park involved. He shall then submit all such bids to the Mississippi Park System. That bid will be accepted which makes the highest cash offer. The Park System, however, retains the right to reject any and all bids. Advertisement by posting and publication is required before each sale.[71] Whenever any timber is sold, the purchaser receives also all necessary rights of ingress and egress to remove the purchased timber.[72]

Twenty-five percent of the gross proceeds from the sale of timber from Game and Fish Commission lands must be paid into the general fund of the county in which the land is located.[73] This statutory provision gives no indication whether the Game and Fish Commission itself has the power to sell the timber, or whether the sales are made by the Forestry Commission as manager

of the timber within the jurisdiction of the Game and Fish Commission.

The State Land Commissioner, with the consent of the Game and Fish Commission, is authorized to lease cut-over and overflow lands to the state unsuitable for cultivation, for the establishment of fish and game preserves.[74] Such leases must provide that no timber shall be cut for commercial purposes. Nothing in the lease, however, shall prevent the state from selling, at any time, any timber on the leased lands.[75] It is guessed, here, that the Forestry Commission would be the agency of the state authorizing the sales referred to above.

Sixteenth section lands or lieu lands not in a city, town or village, may be leased by the board of supervisors of the county controlling the land. No timber on the land, however, shall be cut by the lessees except for fuel, repairs or improvements or where necessarily cut for use of such land for industrial development.[76] The board of supervisors are authorized to sell the merchantible timber of any and all varities.[77] The funds arising from the sale shall be credited to the proper township to which the land was designated.[78] Special statutory provisions have been enacted to apply to the sale of timber from sixteenth section lands in the Choctaw Purchase and lands granted in lieu thereof[79] and to the sale of timber from lands lying in DeSoto National Forest and Homochitto National Forest.[80] These statutes are beyond the scope of this paper.

Where timber on land is assessed to someone other than those owning the fee simple title; and the taxes on the timber are not paid; and such timber is sold to the state for non-payment; the Land Commissioner may sell and dispose of such timber rights in the same manner as tax forfeited lands. The owner of the fee simple may purchase the timber.[81]

The Land Commissioner may contract to sell any state forfeited tax lands. The purchaser, however, must agree not to cut any merchantible timber without the written permission of the Land Commissioner.[82] Once permission is obtained, it is still unlawful to cut timber until the full purchase price has been paid and a patent duly executed.[83] The owner of land, (it is not indicated whether or not this also applies to the owner of timber on the land of another) struck off to the state for non-payment of taxes or sold to an individual by tax sale, does not have the right to cut the merchantible timber on the land until such land is redeemed and the title again vests in the individual owner.[84]

As the purpose of the Forest Harvesting Act is to increase the efficiency of the harvesting of timber and to preserve the tax base represented by forests, it is assumed that the sale of all state owned timber is subject to the limitation of the Act.

Unless limited by federal regulation, every railroad has the right to enter upon land adjacent to its right-of-way for the purpose of repairing the railroad and to cut and take away any wood which is necessary. In all cases, compensation shall be paid to the owner; either as agreed upon or as provided in the chapter on eminent domain.[85]

The road commissioner or contractor of a road on which a bridge or roadway is to be erected or repaired has the authority to take from the land lying within reasonable distance any timber necessary. The county board of supervisors must assess the value of the timber taken and tender payment to the owner.[86]

It is a misdemeanor for any one to fell a tree in excess of six inches in

diameter into a running stream or to leave in a running stream tree tops without removing same immediately if such will materially impede the flow of or navigation upon the stream.[87] If any person fells a tree into any public highway or navigable water and obstructs the same in any manner, and does not remove the same immediately, the overseer of the road shall remove it.[88] The person responsible shall forfeit and pay all expenses of such removal and shall be liable for damages occasioned to another by the obstruction.[89] The board of supervisors of any county (or any road commissioner) may condemn any dead or dangerous timber near a public road which endangers the safety of public travel.[90] Upon the failure of the owner to remove such tree, the board may assess the value thereof and pay or tender the owner the assessed value. The tree shall, then, be cut and removed by the proper authorities.[91]

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)].

1. § 49-19-1.
2. § 49-19-3.
3. § 49-19-7.
4. § 49-19-19.
5. § 55-3-5.
6. § 55-3-1.
7. § 49-19-3.
8. Id.
9. §55-3-7.
10. § 29-3-31.
11. § 29-3-33.
12. Id.
13. § 29-3-37.
14. § 29-3-39.
15. § 29-3-45.
16. § 29-3-49.
17. § 49-19-111.
18. Id.
19. § 49-19-113.
20. Id.
21. § 49-19-53.
22. § 49-19-51.

23. § 49-19-55.

24. § 49-19-57(a).

25. § 49-19-57(b).

26. § 49-19-59.

27. § 49-19-61.

28. § 49-19-63.

29. § 49-19-67.

30. § 49-19-71.

31. § 49-19-69.

32. §§ 51-9-21(d); -13-111(d); -15-119(d); -17-17(c); -11-13(c); -21-13(c).

33. § 51-13-153.

34. § 69-37-27.

35. § 49-19-91.

36. § 49-19-17.

37. § 43-27-11.

38. § 57-17-9.

39. § 37-101-21.

40. § 53-5-7.

41. § 69-1-61.

42. § 29-1-19.

43. § 97-17-89.

44. § 49-7-33.

45. § 49-19-3.

46. § 55-3-11.

47. § 49-19-113.

48. § 49-19-115.

49. § 49-19-117.

50. § 49-19-115.

51. § 49-19-111.

52. § 29-3-49.

53. Id.

54. Miss. Code Ann. § 2998.7-21 (Supp. 1972).

55. § 49-19-111.

56. § 49-19-3.

57. § 49-19-141.

58. Id.

59. § 49-19-145.

60. § 49-19-147.

61. § 49-19-25.

62. Id.

63. § 97-17-13.

64. § 49-1-29(g).

65. § 45-11-7.

66. § 45-3-21(1)(h).

67. § 55-3-11.

68. § 49-19-3.

69. § 55-3-11.

70. § 55-3-53.

71. Id.

72. Id.

73. § 49-1-29(c).

74. § 49-5-1.

75. Id.

76. § 29-3-61.

77. § 29-3-93.

78. Id.

79. See §§ 29-3-1 et seq.

80. § 29-3-95.

81. § 29-1-55.

82. § 29-1-39.

83. § 29-1-41.

84. § 27-41-83.

85. § 77-9-173.

86. § 65-7-101.

87. § 97-15-41.

88. § 65-7-7.

89. Id.

90. § 65-7-9.

91. Id.

IV. WATER

A. WATER AS A RESOURCE.

1. Legislative Intent.

The Mississippi Legislature has declared water to be a basic state resource and subject to statutory provisions designed to effectuate its full utilization and protection.[1] In keeping with the goal to develop and protect the state's water resources, several state agencies have been established and granted diverse powers ranging from flood, drainage, and pollution control to eminent domain powers.

2. Appropriation of Waters.

"Appropriation" may be defined as the use of a specific amount of water at a specific time and place for a designated beneficial purpose within certain limits as to quantity, time, place, and rate of diversion.[2] All appropriation rights are subject to the control of the Board of Water Commissioners, an agency composed of seven members appointed by the Governor for terms of 4 years.[3] The board is authorized to cooperate with all persons and agencies interested in regulating and conserving the use of water[4] and with any federal or state agency in the accumulation of data relating to water resources.[5]

It is stated that appropriation does not constitute absolute rights in surface waters, but such waters remain subject to the principle of beneficial use.[6] The board has the authority to establish the rights of all water users who are making beneficial use of water. In making such determination the board must afford any water user an opportunity to be heard. Moveover, all

such administrative determinations must be reduced to writing with the original given to the person concerned and a copy submitted to the chancery court.[7]

Appropriation rights are strictly governed by statutory provisions, the violation of which carries a maximum fine of $100 or maximum imprisonment of 30 days.[8] Written notice of any alleged violation is required, and such notice may be accompanied by an order of the board. Furthermore, if such order proves insufficient to achieve compliance, the board is empowered to proceed through any court of competent jurisdiction.[9] Nevertheless, no appropriation statute or order is intended to interfere with the customary use of water for domestic purposes or the right of a landowner to make reasonable use of water from a spring on his land or to place a dam on his land.[10]

Before examining the steps required to perfect a proposed appropriation, it will be necessary to define certain terms regarding appropriation. "Beneficial use" is defined as the application of water to a useful purpose that inures to the benefit of the water user and is subject to his dominion but does not include waste.[11] "Surface water" is water occurring on the surface of the ground whereas "ground water" is water occurring beneath the surface of the ground.[12] "Unappropriated waters" consist of (1) water which has never been appropriated; (2) water which has ceased to be put to the beneficial purpose for which it was appropriated; or (3) appropriated water which flows back into a watercourse.[13]

Any person intending to acquire an appropriable right to any surface water may do so by making application to the board for a permit.[14] All permits are dated and examined. Defective permits are returned for correction but will not lose their priority date nor be dismissed if refiled within a specified time

limit.[15] Upon approval of the application, the applicant may take the necessary steps to perfect his proposed appropriation, subject to such limitations as may be prescribed by the board. A prerequisite to the approval of any application is the giving of adequate notice and public hearing to any person adversely affected. If the board refuses to approve an application, the applicant must refrain from any diversion activities. The board is authorized to seek injunctive relief against any person who proceeds to construct diversion works without the approval of the board.[16]

Any person desiring to duild a dam must obtain a statement from the board that such construction will not affect plans for proper utilization of the state's water resources.[17] Upon completion of any diversion works, it is the duty of the board to examine the construction and issue a license if perfected in conformity with the approved plans and application.[18] The board is authorized to approve, modify, or reject any proposed changes in the original appropriation. Any person who changes or attempts to change the point of diversion or use of water without the board's approval shall be guilty of a misdemeanor and subject to a maximum fine of $200.[19] It should be noted that the failure to use water for the specific beneficial purpose authorized in the permit will terminate the appropriator's right. An extension, however, may be granted prior to the expiration.[20] Appeals from orders or acts of the board may be taken to the circuit court, which may sustain, reverse, or modify the order of the board.[21] Whenever water rights are adjudicated by a court, the board must act in accordance with the terms of the decree.[22] The board does, however, possess the authority to take testimony, issue subpoenas, and take depositions during the

course of any hearing.[23]

The regulation of well drilling is also governed by numerous statutory provisions. Every person desiring to engage in the drilling of wells must apply for a license with the board. Such license must be reviewed annually[24] and is required of all well drillers. Failure to obtain such license constitutes a misdemeanor punishable by a fine of not less than $100 nor more than $1,000 with each day of violation constituting a separate offense. Moreover, failure to obey an order requiring remedial action is punishable by a maximum of $100 fine for each day of noncompliance.[25]

Regarding the regulation of water well contractors, the board may (1) make reasonable rules; (2) establish procedures governing submission of applications; (3) inspect water wells and (4) grant exemptions to any requirement resulting in undue hardship.[26] Upon determination by the board that any rules or regulations are being violated, suspension or revocation of the license may be ordered.[27] Licenses may be revoked for any of the following reasons: (1) intentional and material misstatement in application for license; (2) willful violation of statutory provisions; (3) obtaining a license through fraud or misrepresentation; (4) fraudulent or dishonest practice; (5) incompetency as a driller of water wells; (6) failure to file required reports; and (7) willful failure to obey board regulations.[28] Water well drillers are required to keep accurate records and file a report upon completion of each well.[29]

3. Development of the Resource.

While the development and control of water as a resource will be discussed later, it should be mentioned that the Board of Mississippi Geological

Survey has the primary responsibility for the investigation, mapping, and reporting upon water supplies, water power, and the gauging of streams with reference to irrigation and protection from overflow.[30] The board consists of two business men, two geologists, and one licensed civil engineer, all of whom are appointed by the governor for staggered terms of 4 years.[31] The board is authorized to cooperate with the United States Geological Survey or any other federal agency in publishing results of hydrographical surveys of the state.[32] For the purpose of making surveys, all survey employees may enter upon all lands within the state; but such authorization shall not interfere with private property rights.[33]

The importance of water resources in the area of civilian defense is evidenced by the Governor's Executive Order Number 73, a Plan for Utilization of Agencies for Civil Defense Purposes.[34] Specific agencies are given emergency assignments ranging from the maintenance of safe water supplies to protection from the effects of chemical, biological, and radiological warfare.[35] Other assignments provide for emergency use of water transportation in the nature of water rescue, fire, and police services.[36]

Other state agencies are connected with the development of water as a resource. The Universities Marine Center, i.e., the Gulf Coast Research Laboratory, has as a main objective the promotion of the study and knowledge of science including the natural resources.[37] An objective of the Marine Resources Council is the efficient and economic development of marine resources in the state's coastal waters.[38] Moreover, the Mississippi Park Commission is empowered to enforce all reasonable rules and regulations regarding waters in

state parks under its jurisdiction.[39]

B. CONTROL OF WATER RESOURCES.

1. Master Water Management Districts.

In an effort to control and develop the state's water resources the legislature created Master Water Management Districts for the purpose of improving the drainage, conservation, utilization, and distribution of waters for recreation, beautification, and other beneficial uses.[40] Such Master Water Management Districts may be organized from the territory of two or more existing drainage or water management districts or combinations of parts of territory from existing districts or districts not formed.[41] The creation of a Master Water Management District will not be allowed if a sufficient number of landowners object to its organization.[42] Such petition for creation of a Master Water Management District must contain the proposed name of the district, the necessity for the district, and a general description of the region.[43]

Each Master Water Management District employs at least five commissioners who serve 4 year terms in office.[44] The appointed commissioners are authorized to cooperate with the United States Secretary of Agriculture or other federal authorities in the development of plans for works of improvement. Upon development of such plans, the commissioners must compile a report to be approved by the board of any levee district within which any Master Water Management District may be in whole or in part. The report is subject to approval by the chancellor at a public hearing.[45] All orders of the chancery court in connection with Mississippi Water Management Districts may be appealed to the Mississippi Supreme Court within 20 days of such order. All appeals not

perfected within that time will be deemed conclusive and binding.[46] The power to fix the domicile of the Mississippi Water Management District rests with the commissioner of the district. Furthermore, the commissioners are empowered to do anything not inconsistent with other laws or constitutions necessary in carrying out the purpose for which such districts were created.[47] Other powers include authority to borrow money, issue notes or other indebtedness,[48] and to assess the lands in the district in proportion to the benefits accruing to said lands.[49]

2. Flood Control, Drainage, and Erosion.

Numerous state agencies and department are involved in harnessing and controlling Mississippi's water resources. The land commissioner, with the Governor's approval, is authorized to grant easements in the public lands of the state for the construction and maintenance of flood or drainage controls, canals, and ditches.[50] Moreover, commissioners of soil conservation districts are empowered to make available to landowners any material needed in the conservation of soil and water resources. Furthermore, the commissioners are authorized to administer any water and soil conservation, erosion-control, or erosion-prevention project located within its boundaries.[51]

Flood control is of primary concern to the Pearl River Basin Development District, one goal of which is the regulation of the waters of the Pearl River and its tributaries for flood control purposes as well as for the general welfare of the people of the state.[52] It should be noted that the District is empowered to impound and appropriate for beneficial use all overflow water and surface water of the Pearl River or its tributaries by the construction of dams, reservoirs, and

other facilities subject to the provisions discussed at the beginning of this chapter.[53] The District is authorized to cooperate with the United States Army Corps of Engineers, United States Secretary of Agriculture, United States Secretary of Interior, and any other federal or state agency in controlling waters within the Pearl River Basin.[54] The Pearl River Water Supply District also possesses goals similar to the Basin District regarding the control of waters within the district.[55]

Water Resource Management Districts are concerned with water conservation and water drainage. The county board of supervisors is directed to select three County Drainage Commissioners to serve for a period of 6 years in counties containing a drainage district.[56] Drainage districts are empowered to construct, operate, and maintain works of improvement for the diversion and flowage of waters for beneficial use.[57] Such districts are authorized to enter into cooperative agreements with the United States Army Corps of Engineers.[58] Likewise, all agencies and departments of the state are authorized to cooperate with all drainage districts in furtherance of its objectives.[59]

Drainage districts are empowered to: (1) take necessary measures to prevent erosion and sediment damage; (2) further the conservation and disposal of water; and (3) acquire lands and easements for flowage or impoundment of waters.[60] The commissioners are authorized to procure rights-of-way for ditches by agreements with the landowners over or through whose lands they are to be constructed. Furthermore, the commissioners are authorized to obtain outlets outside the district through the use of contracts with the interested parties or by eminent domain.[61] The commissioners are also empowered to do any act necessary in constructing and maintaining any drain and are directed to see that

they are kept clean and in good repair.[62]

The drainage commissioners are authorized to go upon lands for the purpose of removing obstructions, cleaning out and keeping in repair any drainage district.[63] Where the lands of any drainage district lie in two or more counties, the county drainage commissioners in the county containing the greatest number of acres and in which suit is brought for the organization of the district is given jurisdiction of the entire drainage district.[64] Any landowner who prevents or hinders the commissioners in the discharge of their duties may be fined up to $25 per day for each day's interference.[65] Furthermore, any person who purposely impairs or destroys a drainage ditch is guilty of a misdemeanor subject to a maximum fine of $100. Moreover, such person will be liable for double the expense occasioned by repairing the drain.[66]

Sub-drainage districts may be organized and possess all the rights and powers of any other district.[67] When a sub-drainage district has been established, the county drainage commissioners are designated as commissioners of the sub-district.[68]

Additionally condemnation power is granted the commissioners in the case of flood control work constructed by the United States or any of its agencies. Also, such power extends outside the drainage district.[69]

Statutory provisions further grant swamp land district commissioners power and authority to carry out purposes similar to those of the above drainage districts.[70]

Commissioners of any drainage districts entering into agreement with the United States or its agencies are authorized to accept conveyance of any lands and to utilize the same for the benefit of the district in maintenance

of flood control works and improvements.[71]

When the boundaries of the existing drainage district are expanded to include additional land, the district is granted the same powers and rights over the new lands as it has over the land originally embraced.[72] Likewise, a consolidated drainage district is given the same authority and jurisdiction over its combined territory and over the integrated drainage system as if it were a newly organized drainage district.[73]

Miscellaneous powers of the drainage districts include the power to construct and maintain by-passes for conveying surplus and overflow waters,[74] and the power to permit the use of drainage canals under such restrictions as the district may impose.[75]

In addition to the creation of drainage districts, the legislature has provided for the creation of flood control districts, which may be organized for the purpose of cooperating with the United States in the construction of flood control improvements, for the protection of property, and for other flood control works.[76] The flood control district is granted the right of eminent domain and the right to perform all acts necessary for accomplishing the purposes for which the district was created.[77] The court entering the decree authorizing the formation of a flood control district is also required to enter an order appointing three commissioners. All subsequent commissioners are appointed by the chancellor having jurisdiction over the district and serve for a term of 4 years.[78]

In order to protect lands and other property and to prevent overflows, the commissioners of the flood control district are authorized to acquire lands,

easements, or premises that may be necessary for the construction and operation of flood control works.[79] The flood control commissioners have the right to dam up any natural watercourse within constitutional limits[80] and to construct by-passes for the purpose of conveying water from natural streams to their main watercourse and from one watercourse to another.[81] Flood control commissioners are authorized to cooperate with other flood control districts to carry out the purposes underlying their creation.[82]

Pursuant to a policy[83] for the conservation of water and soil resources, the legislature has created Soil Conservation Districts which are empowered to conduct research relating to soil erosion and to develop plans for the conservation of water and soil resources and the prevention of soil erosion.[84] Soil Conservation Commissioners are authorized to formulate regulations governing the use of lands within the district in the interest of conserving water and soil including provisions requiring observance of particular cultivation methods relating to such conservation.[85] The commissioners are authorized to cooperate with other soil conservation commissioners,[86] other state agencies,[87] and federal agencies.[88]

3. Water Pollution and Abatement.

While water pollution is not within the scope of this chapter,[89] it is important to identify the state agencies which are concerned with the pollution of waters and the abatement thereof. The Air and Water Pollution Control Commission is the principal agency through which water pollution statutes are enforced. It is declared unlawful for any person (1) to cause pollution of any state waters; and (2) to discharge any waste into state waters, thereby reducing the

quality below established standards.[90] The commission is authorized to enter upon private or public property for the purpose of inspecting and investigating conditions relating to pollution.[91] The Boat and Water Safety Commission is empowered to obtain damages or injunctive relief in the event of any violation of a regulation adopted to prevent water pollution.[92] Pollution abatement is also of concern to the Pearl River Water Supply District, discussed earlier.[93] Likewise, the Pearl River Basin Development District is authorized to seek damages and injunctive relief.[94] The district is also empowered to control, store, and preserve the waters of the Pearl River or any tributary within the district for the prevention of water pollution.[95]

C. INDUSTRIAL AND MUNICIPAL ACTIVITY.

1. Industrial Development.

The importance of water resources in the development of industries is evidenced by the legislature's express authorization to municipalities to promote industry and the use of natural resources of the state.[96] This power may be exercised only after obtaining a certificate of public convenience and necessity from the Agricultural and Industrial Board.[97] The Agricultural and Industrial Board must determine whether the certificate shall be issued to a municipality to engage in the development of an industrial park. In making such determination, the board must consider the degree of availability of natural resources.[98] Whenever a supervisor's district, city, or town, which adjoins a district in the same county already possessing a certificate, desires to join in the enterprise, the

adjoining supervisor's district, city or town must apply to the Agricultural and Industrial Board for a certificate.[99] County Port Authorities are also authorized to establish industrial parks, and in such development may provide for water, sewage, drainage, or similar facilities.[100]

2. Municipalities and Sanitation.

Counties and municipalities with military camps are authorized to improve or extend within and without their territorial limits waterworks and sewage disposal systems.[101] Further authorization is given to borrow money and issue bonds for the purpose of financing the construction, improvement, or extension of such systems or public works.[102] The bonds are to be payable as to both principal and interest from the revenues derived from the operation of such systems.[103] Furthermore, municipalities are authorized to improve water mains and connections, sanitary disposal systems, and other drainage systems.[104] Also, the Regional Planning Commission acts in an advisory capacity in planning matters regarding land use, water resources, recreational areas, and sewage and garbage disposal.[105]

The Pearl River Water Supply District is organized in view of the public policy to insure a sanitary water supply.[106] The district, through its board of directors, is empowered to impound water of the Pearl River by construction of the necessary facilities to control, preserve, and sell such waters.[107] The board is authorized to construct or acquire facilities for the purpose of processing and transporting the water to cities and for other domestic and commercial purposes.[108] The directors are also empowered to promulgate reasonable regula-

tions to secure and preserve the sanitary condition of all water in and to flow into the district.[109] Violations of board regulations are punishable by a maximum fine of $1,000 and/or fifteen days imprisonment.[110]

Finally, the Pearl River Basin Development District, through its board of directors, is authorized to formulate plans for public works improvements and storage of waters within the Pearl River Basin.[111] Such plans may be developed in conjunction with the United States Army Corps of Engineers, United States Secretary of Agriculture, United States Secretary of Interior, or any other state or federal agency.[112] The district is also authorized to contract with any municipality, corporation, or public agency for the operation of water filtration, purification, or distributing facility.[113] The board of directors of the district are empowered to promulgate reasonable regulations to secure and preserve the sanitary condition of all water in and to flow into any reservoir owned by the district.[114]

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)].

1. § 51-3-1.
2. § 51-3-3(g)(1).
3. § 51-3-15. One member is appointed from each of the state's congressional districts and one from the state at large.
4. § 51-3-21.
5. § 51-3-23.
6. § 51-3-13.
7. § 51-3-25.
8. § 51-3-7.
9. Id.
10. Id. The construction of such dam may not disrupt the average minimum stream flow. However, the board has the authority to permit the approria-tion of any lake or stream in excess of the established minimum. Furthermore, appropriation will not be allowed which impairs pollution control standards or navigation.
11. § 51-3-3.
12. Id.
13. § 51-3-29.
14. See § 51-3-31 for the application procedure.
15. § 51-3-33.
16. § 51-3-35.
17. § 51-3-39.

18. § 59-3-37.

19. § 51-3-45. Each day of unlawful change constitutes a separate offense and separately punishable.

20. § 51-3-11.

21. § 51-3-49. Further appeal may be taken to the Mississippi Supreme Court. The board is allowed 15 days in which it may submit a written offer to correct the order from which the appeal is taken.

22. § 51-3-47.

23. § 51-3-51.

24. § 51-5-1.

25. § 51-5-17.

26. § 51-5-5.

27. § 51-5-9. Procedural due process must be observed including stating the grounds for the revocation or suspension.

28. § 51-5-11.

29. § 51-5-13.

30. § 53-5-7.

31. § 53-5-1.

32. § 53-5-15. The board must prepare reports to the legislature at each regular session showing the progress and condition of the survey. § 53-5-9.

33. § 53-5-13.

34. Exec. Order No. 73 (Sept. 28, 1970).

35. See the provisions regarding assignments for the Dept. of Agriculture and

Commerce, the A & I Board, and the State Air and Water Pollution Control Commission.

36. See assignments for the Mississippi Marine Conservation Commission.

37. § 37-101-21.

38. § 57-15-7.

39. § 55-3-33.

40. See §§ 51-7-1, et seq. MWMD is designated a governmental subdivision of the state. § 51-7-3.

41. § 51-7-5.

42. § 51-7-11.

43. § 51-7-9.

44. § 51-7-13.

45. §§ 51-7-15 to -21.

46. § 51-7-23.

47. § 51-7-25.

48. § 51-7-27.

49. § 51-7-29.

50. § 29-1-99.

51. § 69-27-35.

52. § 51-11-1.

53. § 51-11-13.

54. § 51-11-11.

55. See § 51-9-103. The Pat Harrison Waterway Comm'n also may participate in flood control. § 51-15-3.

56. See §§ 51-31-9, 51-29-17.

57. § 51-33-11.

58. § 51-33-29.

59. § 51-33-3.

60. Id.

61. § 51-31-55. See also § 51-29-123.

62. § 51-31-73.

63. § 51-31-23.

64. § 51-31-79.

65. § 51-31-83.

66. See Miss. Code Ann. § 51-31-101 and § 51-29-99. "Ditches" and "drains" shall be construed also to include levees, closed drains, and open ditches. § 51-31-3.

67. § 51-31-123.

68. § 51-31-125.

69. § 51-35-11.

70. See §§ 51-33-201 et seq.

71. § 51-35-5.

72. § 51-29-137.

73. § 51-29-157.

74. § 51-29-119.

75. § 51-33-33.

76. See §§ 51-35-105 et seq.

77. § 51-35-121.

78. §§ 51-35-129 and 51-35-129.

79. § 51-35-159.

80. See Miss. Const. 1890 § 81.

81. § 51-35-171.

82. § 51-35-167.

83. See § 69-27-3.

84. § 69-27-35.

85. § 69-27-37.

86. § 69-27-51.

87. § 69-27-209.

88. Id.

89. For a detailed discussion of water pollution, see LAWS RELATING TO ENVIRONMENTAL CONTROL.

90. Miss. Code Ann. § 7106-118 (Supp. 1972).

91. Miss. Code Ann. § 7206-122 (Supp. 1972).

92. § 51-9-107.

93. § 51-9-103.

94. § 51-9-127.

95. § 51-11-13.

96. § 57-3-3.

97. Id.

98. § 57-5-13.

99. § 57-1-173.

100. § 59-9-23. See also § 21-27-23.

101. § 17-5-3, et seq.

102. Id.

103. Id.

104. § 21-41-3.

105. § 17-1-33.

106. § 51-9-103.

107. § 51-9-121.

108. Id.

109. § 51-9-127.

110. Id.

111. § 51-11-11.

112. Id.

113. § 51-11-13.

114. § 51-11-19.

V. CROPS AND PLANTS

1. The purpose of the Agricultural AviationLicensing Act is to supervise and regulate for the public good all commercial agricultural aerial applications and to license all persons and aircraft engaged in such activity.[1] This act is administered by the Board of Agricultural Aviation which has the authority to adopt rules necessary to regulate the application of chemicals and pesticides and to set standards for aerial applications. The Board also has access to any premises where there is reason to believe that a chemical or pesticide is being applied or being prepared to be applied by an aerial applicator.[2] However, nothing in the Act shall be construed as conferring upon the Board jurisdiction of the aerial application of hormone type herbicides which is conferred on the State Plant Board by Miss. Code Ann. §§ 69-21-7 to 69-21-15 (1972).[3]

It is a misdemeanor for any person to operate or do business as an applicator or engage in application of pesticides by air unless an applicator's license has been issued by the Board of Agricultural Aviation.[4] Any person seeking an applicator's license must submit proof of financial responsibility, and upon obtaining a license, such person must maintain proof of financial responsibility.[5] Nonresidents who obtain an applicator's license in this state must designate an agent for service of process.[6] Any license may be suspended, cancelled or revoked by the Board after a hearing and an opportunity to be heard has been given to the licensee. Grounds for suspension or revocation are: (1) fraudulent misrepresentation; (2) false statement in application for license or renewal

of license; and (3) violation of any provision of this Act. Appeals may be taken from the Board's decision to the Circuit Court.[7]

2. In the plan for the utilization of agencies for Civil Defense purposes the Department of Agriculture and commerce has the power: (a) to coordinate emergency control and distribution of food products; (b) to direct statewide program for total defense and warfare as it relates to crops; and (c) to cooperate with the United States Department of Agriculture in making estimates of available and required food supplies in relation to emergency.[8] Also, the Board of Trustees of the State Eleemosynary Institutions shall provide, within available resources, facilities for mass feeding.[9]

3. The Game and Fish Commission has the power to issue permits to kill any species of animals or birds which may become injurious to agricultural crops.[10]

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)]

1. Miss. Code Ann. § 5011-02 (Supp. 1972).
2. Miss. Code Ann. § 5011-05 (Supp. 1972).
3. Miss. Code Ann. § 5011-08 (Supp. 1972).
4. § 69-21-113.
5. § 69-21-115.
6. § 69-21-117.
7. § 69-21-121.
8. Executive Order No. 73 (Sept. 28, 1970).
9. Id.
10. § 49-1-39.