

Chapter 7**Compulsory Pooling and Unitization with an
Emphasis on the Statutory and Common Law
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§ 7.01. Introduction.

The oil and gas industry has been in existence for something less than 150 years.¹ Government regulation of the oil and gas industry, including the enactment of compulsory pooling and unitization statutes has been in existence for only a slightly shorter period of time.² This chapter will present the historical context of modern compulsory pooling and unitization regulation as it applies in the Eastern United States,³ as well as how those states have dealt with such issues as unleased mineral owners in both pooling and unitization, the terms under which a compulsory or forced pooling order will deal with non-cooperative owners, the effective date of the pooled unit or unitized area, the participation formula used in compulsory unitization, the minimum number of consenting owners needed to issue a compulsory unitization order and the judicial review of both pooling and unitization orders.

[1] — Basic Terminology.

To be consistent, as used in this chapter, the terms “unitization” or “unit operations” will refer to the consolidation of mineral, leasehold or royalty

¹ The drilling of the Drake well near Titusville, Pennsylvania in 1859 is considered the “birth” of the modern oil and gas industry, although there are published reports of an oil spring existing in Allegany County, New York as early as 1833 and a productive oil well in Washington County, Ohio that may have been drilled as early as 1814. See 1 Bruce M. Kramer and Patrick H. Martin, *The Law of Pooling and Unitization* § 1.01 (2006)[hereinafter Kramer and Martin]; Eugene Kuntz, *A Treatise on the Law of Oil and Gas* §§ 1.4-1.6 (1987)[hereinafter, Kuntz Treatise].

² See 1 Kramer and Martin, *supra* note 1 at § 1.01. See generally, A.B.A., *Legal History of Conservation of Oil and Gas* (1939). Professor Summers identifies Pennsylvania as adopting conservation statutes in 1878, New York in 1879, Ohio in 1883 and West Virginia in 1891. 1939 A.B.A. *History, op cit.* at 1 (n.1). Michigan began its conservation regulation of oil and gas development in 1909, at a time when oil and gas production in the state was sporadic at best. *Id.* at 75-77.

³ While the author declines to define the “eastern” in the title, this chapter will generally limit references to eastern oil and gas development to states physically located east of the Mississippi River, although Louisiana, for various reasons, will not be considered an “eastern” state.