

By: West

H.B. No. 2439

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the enforcement of the laws governing plugging of
3 abandoned oil and gas wells and preventing, controlling, or
4 cleaning up oil and gas wastes or other substances or materials
5 regulated by the Railroad Commission of Texas.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Sections 89.043(c) and (f), Natural Resources
8 Code, are amended to read as follows:

9 (c) Not later than the 30th day before the date the
10 commission enters into a contract to plug a delinquent inactive
11 well, the commission shall send a notice by certified mail to the
12 operator of the well at the address last reported to the commission
13 as required by Section 91.142 and commission rules. The notice
14 shall direct the operator to plug the well and shall state that:

15 (1) the commission may plug the well and foreclose its
16 statutory lien under Section 89.083 or 89.089 unless the operator
17 requests a hearing not later than the 10th day after the date the
18 operator receives the notice;

19 (2) if the commission forecloses its statutory lien
20 under Section 89.083, all well-site equipment will be presumed to
21 have been abandoned and the commission may dispose of the equipment
22 and hydrocarbons from the well as provided by Section 89.085;

23 (3) if the commission forecloses its statutory lien
24 under Section 89.089, the commission may dispose of the interest of

1 the operator and each nonoperator in any hydrocarbons produced in
2 this state and the proceeds from the sale of those hydrocarbons;

3 (4) if the commission plugs the well, the commission:

4 (A) by order may require the operator to
5 reimburse the commission for the plugging costs; or

6 (B) may request the attorney general to file suit
7 against the operator to recover those costs;

8 (5) [~~(4)~~] the commission has a statutory lien on all
9 well-site equipment under Section 89.083 and on the interest of the
10 operator and each nonoperator in any hydrocarbons produced in this
11 state and the proceeds from the sale of those hydrocarbons under
12 Section 89.089; and

13 (6) [~~(5)~~] the lien described by Subdivision (5) [~~(4)~~] is
14 foreclosed by operation of law if the commission does not receive a
15 valid and timely request for a hearing before the 15th day after the
16 date the notice is mailed.

17 (f) At the request of the commission, the attorney general
18 may file suit to enforce an order issued by the commission under
19 Subsection (c)(4)(A) [~~(c)(3)(A)~~].

20 SECTION 2. Section 89.083, Natural Resources Code, is
21 amended by amending Subsection (g) and adding Subsection (g-1) to
22 read as follows:

23 (g) The cause of action is:

24 (1) first, against the operator, to be secured by a
25 first lien, superior to all preexisting and subsequent liens and
26 security interests, on the operator's interest in:

27 (A) the oil and gas in the land;

1 (B) ~~[and]~~ the fixtures, machinery, and equipment
2 found or used on the land where the well is located; and

3 (C) any hydrocarbons produced in this state and
4 the proceeds from the sale of those hydrocarbons; and

5 (2) second, against a nonoperator at the time the well
6 should have been plugged, to be secured by a first lien, superior to
7 all preexisting and subsequent liens and security interests, on the
8 nonoperator's interest in:

9 (A) the oil and gas in the land; and

10 (B) any hydrocarbons produced in this state and
11 the proceeds from the sale of those hydrocarbons.

12 (g-1) A nonoperator may be made a party defendant in the
13 suit against the operator.

14 SECTION 3. Subchapter D, Chapter 89, Natural Resources
15 Code, is amended by adding Section 89.089 to read as follows:

16 Sec. 89.089. LIEN ON OPERATOR'S AND NONOPERATOR'S INTERESTS
17 IN HYDROCARBON PRODUCTION AND PROCEEDS. (a) To secure the recovery
18 of well-plugging costs paid with state money, the state has a first
19 lien, superior to all preexisting and subsequent liens and security
20 interests, on the interests of each operator and nonoperator in any
21 hydrocarbons produced in this state and the proceeds from the sale
22 of those hydrocarbons.

23 (b) The commission may foreclose the lien in the manner
24 provided by Section 89.083.

25 (c) The commission may dispose of the property subject to
26 the lien in the manner provided by Section 89.085.

27 (d) Section 89.086 applies to a claim of a person with a

1 legal or equitable ownership or security interest in property that
2 is described by this section and is disposed of under Section
3 89.085.

4 SECTION 4. Subchapter A, Chapter 91, Natural Resources
5 Code, is amended by adding Section 91.004 to read as follows:

6 Sec. 91.004. RECOVERY OF ESTIMATED PLUGGING COSTS. (a) The
7 commission, in an enforcement action brought by the commission to
8 compel an operator to plug or replug a well, may order the operator
9 to pay the estimated plugging costs for the well if the operator has
10 not plugged or replugged the well or commenced operations at the
11 well site to plug or replug the well within 60 days after the date
12 the commission's order requiring the well to be plugged or
13 replugged becomes final.

14 (b) The estimate of the plugging costs must be based on:

15 (1) the amount of the bond required for the well under
16 Section 91.1041; or

17 (2) proof of average plugging costs incurred by the
18 commission in the district in which the well is located and any
19 special conditions applicable to the well that is the subject of the
20 proceeding.

21 (c) The proceeds recovered as estimated plugging costs for
22 any particular well shall be deposited to the credit of the
23 oil-field cleanup fund.

24 (d) If the actual costs to the commission of plugging the
25 well are more than the proceeds received for the estimated plugging
26 costs, the commission may recover its costs in an action brought
27 under Section 89.083. If the actual costs to the commission of

1 plugging the well are less than the proceeds received for the
2 estimated plugging costs, the commission shall remit to the
3 operator the amount by which the proceeds received exceed the
4 actual costs. The commission is not required to pay interest on a
5 refund under this subsection.

6 (e) If the operator does not pay the estimated plugging
7 costs within 75 days after the date of the order requiring the well
8 to be plugged, the attorney general, on request of the commission,
9 shall file suit to collect the amount of the estimated plugging
10 costs from the operator. Venue for the action lies in the district
11 court for Travis County.

12 SECTION 5. The heading to Section 91.113, Natural Resources
13 Code, is amended to read as follows:

14 Sec. 91.113. INVESTIGATION, ASSESSMENT, PREVENTION,
15 CONTROL, OR CLEANUP OF POLLUTION BY COMMISSION.

16 SECTION 6. Sections 91.113(a)-(d) and (f), Natural
17 Resources Code, are amended to read as follows:

18 (a) If oil and gas wastes or other substances or materials
19 regulated by the commission under Section 91.101 are causing or are
20 likely to cause the pollution of surface or subsurface water, the
21 commission, through its employees or agents, may use money in the
22 oil-field cleanup fund to conduct a site investigation or
23 environmental assessment or to take measures necessary to prevent
24 the unauthorized discharge of, to control, or to clean up the oil
25 and gas wastes or other substances or materials if:

26 (1) the responsible person has failed or refused to
27 take measures necessary to prevent the unauthorized discharge of,

1 to control, or to clean up the oil and gas wastes or other
2 substances or materials [~~after notice and opportunity for hearing~~];

3 (2) the responsible person is unknown, cannot be
4 found, or has no assets with which to take measures necessary to
5 prevent the unauthorized discharge of, to control, or to clean up
6 the oil and gas wastes or other substances or materials; or

7 (3) the oil and gas wastes or other substances or
8 materials are causing, or are likely to cause, the pollution of
9 surface or subsurface water.

10 (b) For purposes of this section, "responsible person"
11 means any operator or other person required by law, rules adopted by
12 the commission, or a valid order of the commission to take measures
13 necessary to prevent the unauthorized discharge of, to control, or
14 to clean up the oil and gas wastes or other substances or materials.

15 (c) The commission or its employees or agents, on proper
16 identification, may enter the land of another to conduct [~~for the~~
17 ~~purpose of conducting~~] a site investigation or environmental
18 assessment or to take measures necessary to prevent the
19 unauthorized discharge of, to control, [~~controlling~~] or to clean
20 [~~cleaning~~] up oil and gas wastes or other substances or materials
21 under this section.

22 (d) The conducting of a site investigation or environmental
23 assessment or the taking of measures necessary to prevent the
24 unauthorized discharge of, to control, or to clean up [~~cleanup of~~]
25 oil and gas wastes or other substances or materials by the
26 commission under this section does not prevent the commission from
27 seeking penalties or other relief provided by law from any person

1 who is required by law, rules adopted by the commission, or a valid
2 order of the commission to control or clean up the oil and gas
3 wastes or other substances or materials.

4 (f) If the commission conducts a site investigation or
5 environmental assessment or takes measures necessary to prevent the
6 unauthorized discharge of, to control, or to clean [~~controls or~~
7 ~~cleans~~] up oil and gas wastes or other substances or materials under
8 this section, the commission may recover all costs incurred by the
9 commission from any person who was required by law, rules adopted by
10 the commission, or a valid order of the commission to take measures
11 necessary to prevent the unauthorized discharge of, to control, or
12 to clean up the oil and gas wastes or other substances or materials.
13 The commission by order may require the person to reimburse the
14 commission for those costs or may request the attorney general to
15 file suit against the person to recover those costs. The commission
16 has a first lien on the responsible person's equipment and
17 hydrocarbons as provided by Section 91.115 to secure the recovery
18 of the commission's costs. At the request of the commission, the
19 attorney general may file suit to enforce an order issued by the
20 commission under this subsection. A suit under this subsection may
21 be filed in any court of competent jurisdiction in Travis County.
22 Costs recovered under this subsection shall be deposited to the
23 oil-field cleanup fund.

24 SECTION 7. Section 91.114(d), Natural Resources Code, is
25 amended to read as follows:

26 (d) The commission shall accept the report or application or
27 approve the certificate if:

1 (1) the conditions that constituted the violation are
2 corrected or are being corrected in accordance with a schedule to
3 which the commission and the organization have agreed;

4 (2) as applicable:

5 (A) all administrative, civil, and criminal
6 penalties and all cleanup and plugging costs incurred by the state
7 relating to those conditions are paid or are being paid in
8 accordance with a payment schedule to which the commission and the
9 organization have agreed; or

10 (B) the estimated plugging costs have been paid
11 in accordance with a commission order; and

12 (3) the report, application, or certificate is in
13 compliance with all other requirements of law and commission rules.

14 SECTION 8. The heading to Section 91.115, Natural Resources
15 Code, is amended to read as follows:

16 Sec. 91.115. FIRST LIEN ON EQUIPMENT, ~~[AND]~~ STORED
17 HYDROCARBONS, OIL AND GAS, AND PRODUCED HYDROCARBONS.

18 SECTION 9. Sections 91.115(a)-(f) and (h), Natural
19 Resources Code, are amended to read as follows:

20 (a) If a responsible person fails to clean up a site or
21 facility [~~that has ceased oil and gas operations~~] under the
22 commission's jurisdiction on or before the date the site or
23 facility is required to be cleaned up by law or by a rule adopted or
24 order issued by the commission or fails to take measures necessary
25 to prevent the unauthorized discharge of or to control oil and gas
26 wastes or other substances or materials as required by law or by a
27 rule adopted or order issued by the commission, the state has a

1 first lien, superior to all preexisting and subsequent liens and
2 security interests, on the responsible person's interest in:

3 (1) any hydrocarbons stored at the site or facility;

4 (2) [~~and in~~] any equipment that is[+]

5 [~~(1)~~] located at the site or facility;

6 (3) oil and gas in the land where the cleanup or
7 prevention or control measures are required; and

8 (4) any hydrocarbons produced in this state and the
9 proceeds from the sale of those hydrocarbons [~~and (2) used by the~~
10 responsible person in connection with the activity that generated
11 the pollution].

12 (b) The lien is in the amount of the total costs of taking
13 measures necessary to prevent the unauthorized discharge of, to
14 control, or to clean [~~cleaning~~] up the oil and gas wastes or other
15 substances from the site or facility and arises on the date the
16 measures are [~~site or facility is~~] required by law or by a rule or
17 order of the commission [~~to be cleaned up~~].

18 (c) The commission may foreclose on the lien by entering
19 into a contract to take measures necessary to prevent the
20 unauthorized discharge of or to control oil and gas wastes or other
21 substances or materials or a contract to clean up the site or
22 facility. The commission is not required to give notice or an
23 opportunity for a hearing to subordinate lienholders before
24 entering into a contract for the taking of measures necessary to
25 prevent the unauthorized discharge of or to control oil and gas
26 wastes or other substances or materials or a contract to clean up
27 the site or facility.

1 (d) The lien is extinguished if necessary measures are taken
2 to prevent the unauthorized discharge of or to control oil and gas
3 wastes or other substances or materials or the site or facility is
4 cleaned up in accordance with commission rules by any person before
5 the commission enters into a contract to take measures necessary to
6 prevent the unauthorized discharge of or to control oil and gas
7 wastes or other substances or materials or a contract to clean up
8 the site or facility.

9 (e) The lien is extinguished as to any stored hydrocarbons
10 or items of equipment that are lawfully removed by any person other
11 than the operator or a nonoperator according to a lien, lease,
12 judgment, written contract, or security agreement before the
13 commission enters into a contract to take measures necessary to
14 prevent the unauthorized discharge of or to control oil and gas
15 wastes or other substances or materials or a cleanup contract. An
16 item of equipment may not be removed from a a [~~an abandoned~~] site or
17 facility if the removal will cause the release of a substance that
18 may cause pollution unless the substance is lawfully disposed of.

19 (f) Equipment or stored hydrocarbons subject to a lien under
20 this section are presumed to have been abandoned on the date the
21 commission enters into a contract to take measures necessary to
22 prevent the unauthorized discharge of or to control oil and gas
23 wastes or other substances or materials from the site or facility or
24 a contract to clean up the site or facility on which the equipment
25 or hydrocarbons are located. The commission may dispose of the
26 equipment or [~~stored~~] hydrocarbons in accordance with the
27 provisions of Sections 89.085, 89.086, and 89.087 [~~of this code~~]

1 for the disposition of well-site equipment and hydrocarbons.

2 (h) The lien provided by this section, as it relates to
3 stored hydrocarbons, the responsible person's interest in oil and
4 gas in the land where the prevention, control, or cleanup measures
5 are required, and the responsible person's interest in any
6 hydrocarbons produced in this state and the proceeds from the sale
7 of those hydrocarbons shall be subject to and inferior to any lien
8 in favor of the State of Texas to secure royalty payments.

9 SECTION 10. The change in law made by this Act applies only
10 to an administrative proceeding that is initiated on or after the
11 effective date of this Act or a cause of action that is filed in
12 connection with an administrative proceeding that is initiated on
13 or after the effective date of this Act. An administrative
14 proceeding that was initiated before the effective date of this Act
15 or a cause of action that is filed in connection with an
16 administrative proceeding the was initiated before the effective
17 date of this Act is governed by the law in effect on the date the
18 administrative proceeding was initiated, and the former law is
19 continued in effect for that purpose.

20 SECTION 11. This Act takes effect September 1, 2005.