

AN ACT

relating to the plugging of certain inactive oil or gas wells and to standards for electrical power lines serving certain oil and gas facilities.

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

SECTION 1. Section 89.002(a), Natural Resources Code, is amended by amending Subdivision (7) and adding Subdivisions (9), (10), (11), (12), and (13) to read as follows:

(7) "Delinquent inactive well" means an inactive ~~[unplugged]~~ well ~~[that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months and]~~ for which, after notice and opportunity for a hearing, the commission has not extended the plugging deadline.

(9) "Cost calculation for plugging an inactive well" means the commission's calculated cost for each foot of well depth plugged based on average actual plugging costs for wells reported by the commission for the preceding state fiscal year for the commission oil and gas division district in which the inactive well is located.

(10) "Enhanced oil recovery project":

(A) means:

(i) a commission-approved project that uses any process for the displacement of oil or other hydrocarbons from a reservoir other than primary recovery and includes the use of an

1 immiscible, miscible, chemical, thermal, or biological process;

2 (ii) a certified project described by  
3 Section 202.054, Tax Code; or

4 (iii) any other project approved by the  
5 commission for enhanced oil recovery; and

6 (B) does not include a water disposal project.

7 (11) "Good faith claim" means a factually supported  
8 claim based on a recognized legal theory to a continuing possessory  
9 right in a mineral estate, such as evidence of a currently valid oil  
10 and gas lease or a recorded deed conveying a fee interest in the  
11 mineral estate.

12 (12) "Inactive well" means an unplugged well that has  
13 had no reported production, disposal, injection, or other permitted  
14 activity for a period of greater than 12 months.

15 (13) "Physically terminated electric service to the  
16 well's production site" means that electric service to an inactive  
17 well site has been disconnected at a point on the electric service  
18 lines most distant from the production site toward the main supply  
19 line in a manner that will not interfere with electrical supply to  
20 adjacent operations, including cathodic protection units.

21 SECTION 2. Chapter 89, Natural Resources Code, is amended  
22 by adding Subchapter B-1 to read as follows:

23 SUBCHAPTER B-1. PLUGGING OF CERTAIN INACTIVE WELLS

24 Sec. 89.021. APPLICABILITY. This subchapter does not apply  
25 to a bay or offshore well as defined by commission rules.

26 Sec. 89.022. PLUGGING OF INACTIVE WELLS REQUIRED. (a)  
27 Except as provided by Section 89.023, on or before the date the

1 operator is required to renew the operator's organization report  
2 required by Section 91.142, an operator of an inactive well must  
3 plug the well in accordance with statutes and commission rules in  
4 effect at the time of plugging.

5 (b) Notwithstanding Subsection (a), a person who assumes  
6 responsibility for the physical operation and control of an  
7 existing inactive well must satisfy the requirements of Sections  
8 89.023(a)(1) and (4) not later than six months after the date the  
9 commission approves the initial form described by Section  
10 89.002(a)(2) and filed with the commission under which the person  
11 assumes responsibility for the well.

12 (c) The commission may not renew or approve the organization  
13 report required by Section 91.142 for an operator that fails to  
14 comply with the requirements of this subchapter.

15 Sec. 89.023. EXTENSION OF DEADLINE FOR PLUGGING INACTIVE  
16 WELL. (a) The commission may grant an extension of the deadline  
17 for plugging an inactive well if the operator maintains a current  
18 organization report with the commission as required by Section  
19 91.142 and if, on or before the date of renewal of the operator's  
20 organization report as required by that section, the operator files  
21 with the commission an application for an extension that includes:

22 (1) an affirmation that complies with Section 89.029;  
23 (2) a statement that the well and associated  
24 facilities are in compliance with all commission rules and orders;

25 (3) a statement that the operator has, and on request  
26 will provide, evidence of a good faith claim to a continuing right  
27 to operate the well; and

1           (4) at least one of the following:

2                   (A) documentation that since the preceding date  
3 that the operator's organization report was required to be renewed  
4 the operator has plugged, or restored to active operation as  
5 defined by commission rule, a number of inactive wells equal to or  
6 greater than 10 percent of the number of inactive wells operated by  
7 the operator on that date;

8                   (B) an abeyance of plugging report on a form  
9 approved by the commission that:

10                           (i) is in the form of a certification signed  
11 by a person licensed by the Texas Board of Professional Engineers or  
12 the Texas Board of Professional Geoscientists;

13                           (ii) includes:

14                                   (a) an affirmation by the licensed  
15 person that the well has:

16                                                   (1) a reasonable expectation of  
17 economic value in excess of the cost of plugging the well for the  
18 duration of the period covered by the report, based on the cost  
19 calculation for plugging an inactive well; and

20                                                   (2) a reasonable expectation of  
21 being restored to a beneficial use that will prevent waste of oil or  
22 gas resources that otherwise would not be produced if the well were  
23 plugged; and

24                                           (b) appropriate documentation  
25 demonstrating the basis for the affirmation of the well's future  
26 utility; and

27                           (iii) specifies the field and the covered

1 wells within that field in a format prescribed by the commission;

2 (C) a statement that the well is part of an  
3 enhanced oil recovery project;

4 (D) if the operator of the well is not currently  
5 otherwise required by commission rule or order to conduct a fluid  
6 level or hydraulic pressure test of the well, documentation of the  
7 results of a successful fluid level or hydraulic pressure test of  
8 the well conducted in accordance with the commission's rules in  
9 effect at the time the test is conducted;

10 (E) a supplemental bond, letter of credit, or  
11 cash deposit sufficient for each well specified in the application  
12 that:

13 (i) complies with the requirements of  
14 Chapter 91; and

15 (ii) is of an amount at least equal to the  
16 cost calculation for plugging an inactive well for each well  
17 specified in the application;

18 (F) documentation of the deposit with the  
19 commission each time the operator files an application of an amount  
20 of escrow funds as prescribed by commission rule that equal at least  
21 10 percent of the total cost calculation for plugging an inactive  
22 well for each well specified in the application; or

23 (G) if the operator is a publicly traded entity:

24 (i) the following documents:

25 (a) a copy of the operator's federal  
26 documents filed to comply with Financial Accounting Standards Board  
27 Statement No. 143, Accounting for Asset Retirement Obligations; and

1                   (b) an original, executed Uniform  
2 Commercial Code Form 1 Financing Statement, filed with the  
3 secretary of state, that:

4                   (1) names the operator as the  
5 "debtor" and the Railroad Commission of Texas as the "secured  
6 creditor"; and

7                   (2) specifies the funds covered  
8 by the documents described by Sub-subparagraph (a) in the amount of  
9 the cost calculation for plugging an inactive well for each well  
10 specified in the application; or

11                   (ii) a blanket bond in the amount of the  
12 lesser of:

13                   (a) the cost calculation for plugging  
14 any inactive wells; or

15                   (b) \$2 million.

16                   (b) Notwithstanding Subsection (a), an operator may not  
17 obtain an extension of the deadline for plugging an inactive well by  
18 complying with that subsection if the plugging of the well is  
19 otherwise required by commission rules or orders.

20                   Sec. 89.024. ABEYANCE OF PLUGGING REPORT. (a) An abeyance  
21 of plugging report filed under Section 89.023(a)(4)(B) is valid for  
22 a period of not more than five years.

23                   (b) An abeyance of plugging report may cover more than one  
24 well in a field but may not cover more than one field.

25                   (c) An abeyance of plugging report may not be transferred to  
26 a new operator of an existing inactive well. A new operator of an  
27 existing inactive well must file a new abeyance of plugging report

1 or otherwise comply with the requirements of this subchapter on or  
2 before the deadline provided by Section 89.022(b). This subsection  
3 does not prohibit the transfer of an abeyance of plugging report in  
4 the event of a change of name of an operator.

5 (d) An operator who files an abeyance of plugging report  
6 must pay an annual fee of \$100 for each well covered by the report.  
7 A fee collected under this section shall be deposited in the  
8 oil-field cleanup fund.

9 Sec. 89.025. ENHANCED OIL RECOVERY PROJECT. (a) For  
10 purposes of Section 89.023(a)(4)(C), an inactive well is considered  
11 to be part of an enhanced oil recovery project if the well is  
12 located on a unit or lease or in a field associated with such a  
13 project.

14 (b) A statement that an inactive well is part of an enhanced  
15 oil recovery project may not be transferred to a new operator of an  
16 existing inactive well. A new operator of an existing inactive well  
17 must file a new statement that the well is part of such a project or  
18 otherwise comply with the requirements of this subchapter on or  
19 before the deadline provided by Section 89.022(b). This subsection  
20 does not prohibit the transfer of a statement that a well is part of  
21 an enhanced oil recovery project in the event of a change of name of  
22 an operator.

23 Sec. 89.026. FLUID LEVEL OR HYDRAULIC PRESSURE TEST. (a)  
24 Documentation filed under Section 89.023(a)(4)(D) of the results of  
25 a successful fluid level test is valid for a period of one year from  
26 the date of the test. Documentation filed under that section of the  
27 results of a successful hydraulic pressure test is valid for a

1 period of not more than five years from the date of the test.

2 (b) The operator must notify the office of the commission  
3 oil and gas division district in which an inactive well is located  
4 at least three days before the date the operator conducts a fluid  
5 level or hydraulic pressure test of the well and may not conduct the  
6 test without the approval of the office. The commission may require  
7 that a test be witnessed by a commission employee.

8 (c) Documentation of the results of a successful fluid level  
9 or hydraulic pressure test may be transferred to a new operator of  
10 an existing inactive well.

11 (d) An operator who files documentation described by  
12 Subsection (a) must pay an annual fee of \$50 for each well covered  
13 by the documentation. A fee collected under this section shall be  
14 deposited in the oil-field cleanup fund.

15 Sec. 89.027. SUPPLEMENTAL FINANCIAL ASSURANCE. (a) A  
16 supplemental bond, letter of credit, or cash deposit filed under  
17 Section 89.023(a)(4)(E) is in addition to any other financial  
18 assurance otherwise required of the operator or for the well.

19 (b) A supplemental bond, letter of credit, or cash deposit  
20 may not be transferred to a new operator of an existing inactive  
21 well. A new operator of an existing inactive well must file a new  
22 supplemental bond, letter of credit, or cash deposit or otherwise  
23 comply with the requirements of this subchapter by the deadline  
24 provided by Section 89.022(b).

25 Sec. 89.028. ESCROW FUNDS. (a) Escrow funds described by  
26 Section 89.023(a)(4)(F) must be deposited with the commission each  
27 time an operator files an application for an extension of the



1 deadline for plugging an inactive well.

2 (b) Escrow funds deposited with the commission may be  
3 released only with the approval of the commission as prescribed by  
4 commission rule.

5 Sec. 89.029. AFFIRMATION REGARDING SURFACE REQUIREMENTS.

6 (a) An application for an extension of the deadline for plugging an  
7 inactive well must include a written affirmation by the operator:

8 (1) that the operator has physically terminated  
9 electric service to the well's production site; and

10 (2) stating the following, as applicable, if the  
11 operator does not own the surface of the land on which the well is  
12 located:

13 (A) if the well has been inactive for at least  
14 five years but for less than 10 years as of the date of renewal of  
15 the operator's organization report, that the operator has emptied  
16 or purged of production fluids all piping, tanks, vessels, and  
17 equipment associated with and exclusive to the well; or

18 (B) if the well has been inactive for at least 10  
19 years as of the date of renewal of the operator's organization  
20 report, that the operator has removed all surface process equipment  
21 and related piping, tanks, tank batteries, pump jacks, headers, and  
22 fences, as well as junk and trash as defined by commission rule,  
23 associated with and exclusive to the well.

24 (b) An operator of an inactive well shall leave a clearly  
25 visible marker at the wellhead of the well.

26 (c) The commission shall adopt rules regulating the  
27 transfer of material described by Subsection (a)(2)(B) and

1 restricting its accumulation on an active lease.

2 (d) Notwithstanding Subsection (a), an operator may be  
3 eligible for a temporary extension of the deadline for plugging an  
4 inactive well or a temporary exemption from the requirements of  
5 Subsection (a) as provided by commission rule if the operator is  
6 unable to comply with the requirements of that subsection because  
7 of safety concerns or required maintenance of the well site and the  
8 operator includes with the application a written affirmation of the  
9 facts regarding the safety concerns or maintenance.

10 (e) An operator may be eligible for an extension of the  
11 deadline for plugging a well without complying with Subsection  
12 (a)(2)(B) if the well is located on a unit or lease or in a field  
13 associated with an enhanced oil recovery project and the operator  
14 includes a statement in the written affirmation that the well is  
15 part of such a project. The exemption provided by this subsection  
16 applies only to the equipment required for the project.

17 (f) Notwithstanding the other provisions of this  
18 subchapter, the commission shall adopt rules providing for the  
19 phase-in of the duty to comply with Subsection (a)(2)(B) over a  
20 period of five years beginning September 1, 2010. The rules must  
21 require the operators of one-fifth of the wells that are subject to  
22 that subsection in each year during the phase-in period to comply  
23 with that subsection.

24 Sec. 89.030. REVOCATION OF EXTENSION OF DEADLINE FOR  
25 PLUGGING INACTIVE WELL. The commission may revoke an extension of  
26 the deadline for plugging an inactive well granted under this  
27 subchapter if the commission determines, after notice and an

1 opportunity for a hearing, that the applicant is ineligible for the  
2 extension under the commission's rules or orders.

3 SECTION 3. Subchapter B, Chapter 91, Natural Resources  
4 Code, is amended by adding Section 91.019 to read as follows:

5 Sec. 91.019. STANDARDS FOR CONSTRUCTION, OPERATION, AND  
6 MAINTENANCE OF ELECTRICAL POWER LINES. An operator shall  
7 construct, operate, and maintain an electrical power line serving a  
8 well site or other surface facility employed in operations incident  
9 to oil and gas development and production in accordance with the  
10 National Electrical Code published by the National Fire Protection  
11 Association and adopted by the Texas Commission of Licensing and  
12 Regulation under Chapter 1305, Occupations Code.

13 SECTION 4. Section 91.111(c), Natural Resources Code, is  
14 amended to read as follows:

15 (c) The fund consists of:

16 (1) penalties imposed under Section 85.381 for  
17 violation of a law, order, or rule relating to well plugging  
18 requirements;

19 (2) proceeds from bonds and other financial security  
20 required by this chapter and benefits under well-specific plugging  
21 insurance policies described by Section 91.104(c) that are paid to  
22 the state as contingent beneficiary of the policies, subject to the  
23 refund provisions of Section 91.1091, if applicable;

24 (3) private contributions, including contributions  
25 made under Section 89.084;

26 (4) expenses collected under Section 89.083;

27 (5) fees imposed under Section 85.2021;

- 1           (6) civil penalties collected for violations of  
2 Chapter 89 or of rules or orders relating to plugging that are  
3 adopted under this code;
- 4           (7) proceeds collected under Sections 89.085 and  
5 91.115;
- 6           (8) interest earned on the funds deposited in the  
7 fund;
- 8           (9) civil penalties or costs recovered under Section  
9 91.457 or 91.459;
- 10          (10) oil and gas waste hauler permit application fees  
11 collected under Section 29.015, Water Code;
- 12          (11) costs recovered under Section 91.113(f);
- 13          (12) hazardous oil and gas waste generation fees  
14 collected under Section 91.605;
- 15          (13) oil-field cleanup regulatory fees on oil  
16 collected under Section 81.116;
- 17          (14) oil-field cleanup regulatory fees on gas  
18 collected under Section 81.117;
- 19          (15) fees for a reissued certificate collected under  
20 Section 91.707;
- 21          (16) fees collected under Section 91.1013;
- 22          (17) fees collected under Section 89.088;
- 23          (18) penalties collected under Section 81.0531;
- 24          (19) fees collected under Section 91.142;
- 25          (20) fees collected under Section 91.654;
- 26          (21) costs recovered under Sections 91.656 and 91.657;
- 27          (22) two-thirds of the fees collected under Section

1 81.0521; [~~and~~]

2 (23) fees collected under Sections 89.024 and 89.026;

3 and

4 (24) legislative appropriations.

5 SECTION 5. (a) Not later than September 1, 2010, the  
6 Railroad Commission of Texas shall be prepared to grant extensions  
7 of the deadline for plugging an inactive well under Subchapter B-1,  
8 Chapter 89, Natural Resources Code, as added by this Act.

9 (b) The change in law made by this Act applies only to the  
10 renewal or approval of an organization report on or after September  
11 1, 2010. The renewal or approval of an organization report before  
12 September 1, 2010, is governed by the law as it existed immediately  
13 before the effective date of this Act, and that law is continued in  
14 effect for that purpose.

15 SECTION 6. This Act takes effect September 1, 2009.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2259 was passed by the House on April 29, 2009, by the following vote: Yeas 144, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2259 on May 20, 2009, by the following vote: Yeas 138, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2259 was passed by the Senate, with amendments, on May 18, 2009, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor