

# HB 2259: ‘Plug It, Prove It Or Assure It’

Approximately 110,000 inactive wells in Texas are legally maintained by bonded operators and are annually reapproved by the Texas Railroad Commission (RRC) to remain unplugged.

Regardless of the success of the Oilfield Cleanup Fund in plugging orphaned wells and cleaning up orphaned sights, many legislators and the general public see this as a mounting future problem.

In an effort to avert negative legislation and forestall severely increased levels of financial assurance, representatives from each of the state’s oil and gas associations met with landowners groups, royalty owners, the RRC staff and legislative staff for nearly two years to devise acceptable legislation.

It was finally passed as HB 2259 by Rep. **Myra Crownover**, was signed by the Governor and becomes effective September 1.

Please note that the legislation affects only inactive wells. There are no changes in statute or rule for active production. All current financial assurance remains applicable and in effect.

The RRC may grant an extension of the plugging of an inactive well if the operator maintains a current organization report, provides a statement that the well and associated facilities are in compliance with all commission rules and orders, and a statement that the operator has evidence of a good faith claim to a continuing right to operate the well.

HB 2259 provides a menu of options from which an operator may choose to satisfy additional assurances regarding the inventory of inactive wells. The operator shall choose from one of the following:

1) provide documentation that within the past year since the renewal of the operator’s organization report, the operator has plugged or restored to active operation (as defined by commission rule) a number of inactive wells equal to or greater than 10% of the inactive well operated by the operator.

2) provide a RRC abeyance of plugging report with a certification signed by a person licensed by the Texas Board of Professional Engineers or the Texas Board of Professional Geoscientists, which affirms a reasonable expectation of economic value in excess of the cost of plugging the well; which affirms a reasonable expectation of being restored to beneficial use that will prevent waste; and provides appropriate documentation demonstrating the well’s future utility. An abeyance of a plugging report is valid for 5 years; it may cover more than one well in a field but not more than one field; the report may not be transferred to a new operator but the new operator must file a new report. The report carries a \$100 annual fee.

3) a statement that the well is part of an enhanced oil recovery project.

4) if the operator of the well is not currently otherwise required to conduct a fluid level or hydraulic pressure test, documentation of such tests may be submitted. A fluid level test is valid for one year; the hydraulic pressure test is valid for five years. This report requires a \$50 annual fee.

5) provide a supplemental bond, letter of credit, or cash deposit sufficient for each inactive well; the supplemental instrument must comply with current rules of Chapter 91 and be in an amount at least equal to the cost calculation for plugging. The bond, letter of credit, or cash deposit may not be transferred to a new operator, but a new supplemental bond must be filed.

6) provide documentation of the deposit with the commission of escrow funds prescribed by commission rule that equals at least 10% of the total cost calculation for plugging each inactive well in the application.

7) or, if the operator is a publicly held corporation, the operator may provide a FASB 143, Accounting for Asset Retirement Obligations and a UCC Form 1 Financing Statement, filed with the Texas Secretary of State,

naming the operator as the 'debtor' and the RRC as the 'secured creditor'; or may file a blanket bond equal to the cost calculation of plugging the inactive wells, or a \$2 million dollar bond.

Through out the legislation, reference to the cost calculation of plugging the 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 by RRC district.

In answer to unresolved complaints regarding surface cleanup of inactive locations, HB 2259 requires the operator's written affirmation of the following:

- 1) the operator has physically terminated electric service to the production site;
  - 2) if the well has been inactive for more that 5 years but less than 10 years, the operator must have emptied or purged all production fluid, all piping, tanks, vessels, and equipment associated and exclusive to the well; or,
  - 3) if the well has been inactive for as at least 10 years, the operator must have removed all surface process equipment and related piping, tanks, tank batteries, pump jacks, headers, and fences, as well as junk and trash.
- Temporary extensions may be given to accommodate safety concerns or equipment needed for required maintenance; or for wells associated with an enhanced oil recovery project; and, there is a five year phase in for the 10 year compliance rules.

The RRC is expected to begin the rules process in September, 2009.