



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Barry T. Smitherman
Commissioner David Porter
Commissioner Buddy Garcia

FROM: Colin K. Lineberry, Director – Hearings Section
Office of General Counsel

THRU: Lindil C. Fowler, General Counsel

DATE: June 5, 2012

SUBJECT: Adoption of amendments to 16 Tex. Admin. Code §3.15, relating to Surface Equipment Removal Requirements and Inactive Wells;
O&G Docket No. 20-0274975

Attached are Staff's recommended preamble and rule text to adopt amendments to §3.15, relating to Surface Equipment Removal Requirements and Inactive Wells. The amendments implement changes in procedure mandated by House Bill 3134 (82nd Legislature, Regular Session, 2011), dealing with the procedures to be followed when Railroad Commission Staff determines that an operator is not in compliance with the requirements for inactive wells.

House Bill 3134 amended provisions of Texas Natural Resources Code §89.022 and §89.023 regarding the effect of an administrative determination that an operator had not qualified for a plugging extension. Prior to the statutory amendments, §89.022(c) simply prohibited the Railroad Commission from renewing the organization report ("Form P-5") of an operator that had not complied with the statutory requirements concerning inactive wells. House Bill 3134 added subsections (d)-(f) which provide that if Commission Staff determines that an operator has not complied with the inactive well requirements, Staff must: 1) notify the operator of that determination; 2) provide the operator a written statement of the deficiencies; and, 3) notify the operator it has 90 days to achieve compliance. After the 90 day period has run, Staff must again review the issue and notify the operator if Staff concludes that the operator remains out of compliance. In that case, the operator has 30 days to request a hearing on the issue. The operator is required to pay the costs associated with the requested hearing. The statute specifies that the operator's organization report remains in effect until a Commission order on the issue becomes final.

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The amendments conform the Commission's rule concerning inactive wells to the statutory amendments and adopt a \$4500 fee to cover hearing costs. The proposed amendments were published in the *Texas Register* on April 6, 2012 for a 30-day comment period. Only one comment was received. The Texas Oil & Gas Association offered suggestions and observations on three aspects of the proposed amendments. TxOGA's comments are addressed beginning on page 2 of the preamble.

In the attached rule text, changes to the proposed language are shown in italicized, bold typeface. Staff recommends that the commission adopt the amendments to §3.15 with these clarifying changes, as explained in the preamble.

cc: Polly McDonald
Cristina Self
Tim Poe
Kellie Martinec

1 The Railroad Commission of Texas (Commission) adopts amendments to §3.15, relating to
2 Surface Equipment Removal Requirements and Inactive Wells, with changes from the version published
3 in the April 6, 2012, issue of the *Texas Register* (37 TexReg 2291). House Bill (HB) 3134 (82nd
4 Legislature, Regular Session, 2011) took effect June 17, 2011, and amended Texas Natural Resources
5 Code, §89.022 and §89.023, concerning plugging extensions for inactive wells.

6 Currently, §3.15(g) authorizes the Commission or its delegate to administratively deny an
7 application for a plugging extension for an inactive well if it determines that the application does not
8 meet the requirements of §3.15. Consistent with the statutory changes to Texas Natural Resources Code,
9 §89.022, the adopted amendments only authorize administrative denial when an applicant has failed to
10 maintain its organization report, to pay statutorily required organization report filing fees, or to provide
11 statutorily required financial assurance. Where the Commission or its delegate determines that an
12 applicant for a plugging extension has failed to comply with the substantive requirements for a plugging
13 extension, the amendments implement the statutory mandate that the applicant be given notice of the
14 deficiency and 90 days to cure any defects in its application. If, after the 90-day period, the Commission
15 determines that the application remains deficient, the applicant will be given notice of this determination
16 and will have 30 days to request a hearing and pay the hearing fee. If a hearing is not timely requested or
17 the hearing fee is not timely submitted, the plugging extension and associated organization report are
18 subject to denial by Commission Order without further notice or opportunity for hearing. Under the
19 adopted amendments, where an organization report cannot be renewed solely because of an
20 administrative determination that the applicant has not complied with the substantive requirements for a
21 plugging extension, the applicant's organization report remains in effect until the Commission approves
22 its extension application or enters a final order denying the application.

23 The Commission received one comment on the proposal from the Texas Oil and Gas Association
24 (TxOGA). TxOGA offered "observations and suggestions" on three aspects of the proposed rule. With

1 regard to the portion of proposed §3.15(g)(3) stating that a Commission delegate shall notify an operator
2 of a determination that it has not met the inactive well requirements within 14 days, TxOGA states that it
3 is unclear when the 14-day period begins. The Commission agrees, and to remove any potential ambiguity,
4 adopts a change to add the phrase, “. . . after receipt of the applicant’s administratively complete
5 organization report renewal packet, including all statutorily required fees and financial assurance.”

6 TxOGA next comments that §3.15(g)(4) does not include a refund process in the case where a
7 matter is resolved prior to hearing. This comment accurately states the intent of the rule. No refunds
8 will be given once a hearing has been requested and the hearing fee paid. An organization report renewal
9 packet, including a listing of the operator’s inactive wells, is typically mailed to the operator 60 to 90
10 days prior to that operator’s renewal date. Under the rule, the operator will have an additional 90 days
11 after the renewal date to resolve any deficiencies regarding inactive wells and, if still not resolved, 30
12 days after that before a hearing request must be filed and the hearing fee paid. Consequently, operators
13 will generally have four to six months after initial notice of the wells the Commission considers to be
14 inactive and non-compliant to resolve any inactive well issues without paying the hearing fee. The
15 Commission, however, must incur the bulk of hearing-related expenses prior to the hearing request. All
16 research and the compilation of data concerning the operator’s inactive wells that the Commission has
17 determined to be non-complaint must be done long prior to the hearing request deadline. Initially, the
18 Commission must do this work to prepare the renewal packet. After receipt of the applicant’s
19 organization report and supporting documents, this information must be reviewed and, for operators
20 determined to be non-compliant, the required notice of this determination must be prepared to commence
21 the 90-day “cure” period. Subsequently, if Commission staff determines that inactive well deficiencies
22 remain, this process must be repeated to commence the 30-day period to request a hearing. There are
23 approximately 1,800 operators currently identified as non-complaint with the inactive well requirements
24 and thus potentially 1,800 hearings could be required. The hearings examiners who will actually conduct

1 the inactive well hearings must be hired and trained prior to the hearing dates and must be available to
2 conduct the hearings even if the operator actually resolves its inactive well deficiencies shortly prior to
3 the hearing. Because the applicant will have an extended time to resolve the staff determination that its
4 inactive wells are non-complaint prior to the deadline for requesting a hearing and paying the hearing fee
5 and because the bulk of the Commission's costs are incurred prior to the hearing in dealing with the
6 application and in having the hearing process in place, no refunds will be given if an operator withdraws
7 its hearing request after paying the hearing fee.

8 Finally, TxOGA comments that the references to "well" are unclear and could be understood to
9 refer to all of an operator's inactive wells or only those inactive wells that the Commission or its delegate
10 has determined to be non-compliant. As suggested by this comment, to remove any potential ambiguity,
11 the Commission adopts §3.15(g)(4) with a change to amend the reference to the wells required to be
12 identified by API number from "each well" to "each inactive well for which the operator is seeking a
13 hearing to contest the determination that the well remains out of compliance." The Commission also
14 adopts wording in §3.15(g)(5) changing the phrase "a well that is the subject of the application" to "a
15 well that is the subject of the hearing request."

16 The Commission adopts the amendments pursuant to Texas Natural Resources Code, §81.051
17 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or
18 operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and
19 regulating persons and their operations under the jurisdiction of the Commission; Texas Natural
20 Resources Code, Chapter 89, Subchapter B-1, §89.022 and §89.023, as amended by HB 3134, which give
21 the Commission authority over the maintenance of inactive wells and plugging extensions for inactive
22 wells; and Texas Natural Resources Code, §91.101, which gives the Railroad Commission authority to
23 adopt rules and orders governing the operation, abandonment, and proper plugging of wells subject to the
24 jurisdiction of the Commission.

1 Texas Natural Resources Code, §§81.051, 81.052, 89.022, 89.023, and 91.101 are affected by the
2 adopted amendments.

3 Statutory authority: Texas Natural Resources Code, Chapters 81, 89, and 91.

4 Cross-reference to statute: Texas Natural Resources Code, Chapters 81, 89, and 91.

5
6 §3.15. Surface Equipment Removal Requirements and Inactive Wells.

7 (a) - (f) (No change.)

8 (g) Commission action on application for plugging extension.

9 (1) The Commission or its delegate shall administratively grant all applications for
10 plugging extensions that meet the requirements of Commission rules.

11 (2) The Commission or its delegate may administratively deny an application for a
12 plugging extension for an inactive well if the Commission or its delegate determines that:

13 (A) the applicant does not have an active organization report at the time the
14 plugging extension application is filed;

15 (B) the applicant has not submitted all required filing fees and financial
16 assurance for the requested plugging extension and for renewal of its organization report; or

17 (C) the applicant has not submitted a signed organization report for the applied-
18 for extension year that qualifies for approval regardless of whether the applicant has complied with the
19 inactive well requirements of this section.

20 (3) Except as provided in paragraph (2) of this subsection, if the Commission or its
21 delegate determines that an organization report should be denied renewal solely because it does not meet
22 the inactive well requirements of this section, a Commission delegate shall, within a reasonable time of
23 not more than 14 days after receipt of the applicant's administratively complete organization report
24 renewal packet, including all statutorily required fees and financial assurance:

1 (A) notify the operator of the determination;

2 (B) provide the operator with a written statement of the reasons for the
3 determination; and

4 (C) notify the operator that it has 90 days from the expiration of its most recently
5 approved organization report to comply with the requirements of this section.

6 (4) If, after the expiration of the 90-day period specified in paragraph (3)(C) of this
7 subsection, the Commission or its delegate determines that the operator remains out of compliance with
8 the requirements of this section, the Commission delegate shall mail the operator a second written notice
9 of this determination. The operator may request a hearing. The operator must file a written request for
10 hearing and the hearing fee of \$4,500 with the Office of General Counsel, Hearings Section, Docket
11 Services, no later than 30 days from the date the second written notice was mailed to the operator. In the
12 request for hearing, the operator must identify by its assigned American Petroleum Institute (API)
13 number each *inactive well for which the operator is seeking a hearing to contest the determination that*
14 *the well remains out of compliance.* If the operator fails to timely file a request for hearing and the
15 required hearing fee, the Commission shall enter an order denying the plugging extension request and
16 denying renewal of the operator's organization report without further notice or opportunity for hearing.

17 (5) At the time an operator files a request for hearing under this subsection, the operator
18 shall provide a list of affected persons to be given notice of the hearing. Affected persons shall include
19 the owners of the surface estate of each tract on which a well that is the subject of the *hearing request*
20 *[application]* is located, the director of the Commission's Enforcement Section, and the district director
21 of each Commission district in which the wells are located. The applicant's failure to diligently prosecute
22 a hearing requested under this subsection may result in the application being involuntarily dismissed for
23 want of prosecution on the motion of any affected person or on the Commission's own motion.

1 (6) If an operator files a timely plugging extension application that is not properly
2 administratively denied for the reasons specified in paragraph (2) of this subsection, then the operator's
3 previously approved organization report shall remain in effect until the Commission approves its
4 plugging extension application or enters a final order denying the application.

5 ~~[(g) Administrative denial of extension. The Commission or its delegate may administratively~~
6 ~~deny an application for a plugging extension for an inactive well if it does not meet the requirements of~~
7 ~~this section. In the event of an administrative denial, an operator may request a hearing. The operator~~
8 ~~must file the request for hearing with the Office of General Counsel, Hearings Section, Docket Services,~~
9 ~~no later than 30 days from the date of the administrative denial of the application. In the request for~~
10 ~~hearing, the operator must identify each well by its assigned American Petroleum Institute (API~~
11 ~~number.]~~

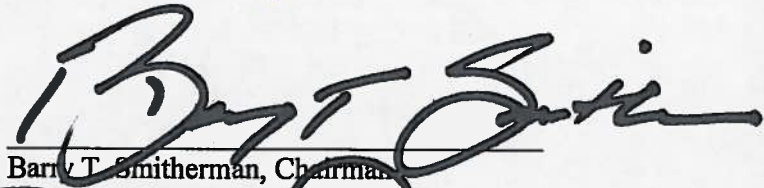
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1 (h) - (p) (No change.)

2 This agency hereby certifies that the section as adopted has been reviewed by legal counsel and
3 found to be a valid exercise of the agency's legal authority.

4 Issued in Austin, Texas, on June 12, 2012.

5 Filed with the Office of the Secretary of State on June 12, 2012.



Barry T. Smitherman, Chairman



David Porter, Commissioner




Buddy Garcia, Commissioner

ATTEST:



Kathy Way
Secretary of the Commission



Mary Ross McDonald / krm
Mary Ross McDonald
Texas Register Liaison/Certifying Official
Railroad Commission of Texas