

CHAPTER 515

H.B. No. 2705

AN ACT

relating to the salvage and disposition of oil and gas well-site or other facility equipment or hydrocarbons on plugging or cleanup by the state and to the oil-field cleanup fund.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 89.002(a), Natural Resources Code, is amended by adding Subdivisions (5), (6), (7), and (8) to read as follows:

(5) *“Well-site equipment” means any production-related equipment or materials specific to the well being plugged, including motors, pumps, pump jacks, tanks, tank batteries, separators, compressors, casing, tubing, and rods.*

(6) *“Lease” means the lease on which a well made the subject of a plugging contract is located.*

(7) *“Delinquent inactive well” means an 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.*

(8) *“Plugging” includes replugging.*

SECTION 2. Section 89.043, Natural Resources Code, is amended by amending Subsection (b) and adding Subsections (c), (d), and (e) to read as follows:

(b) If a well is leaking salt water, oil, or gas or is likely to leak salt water, oil, or gas, and the leakage will cause or is likely to cause a serious threat of pollution or injury to the public

health, the commission, through its employees or agents, may direct the operator to take remedial action or to plug the well or may plug or replug the well without holding a hearing under Section 89.041 of this code or giving notice under Subsection (c) of this section.

(c) On or before the 30th day before the date the commission enters into a contract to plug a delinquent inactive well, the commission shall send a notice by certified mail to the operator of the well at the address last reported to the commission as required by Section 91.142 of this code and commission rules. The notice shall direct the operator to plug the well and shall state that:

(1) the commission may plug the well unless the operator requests a hearing not later than the 10th day after the date the operator receives the notice;

(2) if the commission plugs the well, all well-site equipment will be presumed to have been abandoned and the commission may dispose of the equipment and hydrocarbons from the well as provided by Section 89.085 of this code; and

(3) the attorney general may file suit against the operator to recover the plugging costs if the commission plugs the well and the operator fails to reimburse the commission for the plugging costs.

(d) The operator of a well made the subject of a prior commission final order directing that it be plugged is not entitled to a second hearing under this section.

(e) The commission shall file for record a copy of the notice in the office of the county clerk of the county in which the well is located. The copy of the notice filed in the office of the county clerk must contain the section, block, survey, and abstract number, when available to the commission, of the land on which the well is located. The clerk shall record the notice in the real property records of the county. The commission shall furnish a copy of the notice to a holder of a lien on the well or a nonoperator on that person's request. For purposes of title insurance policies issued under authority of Chapter 9, Insurance Code, this notice is not a notice of enforcement or violation of law, ordinance, or governmental regulation unless the notice contains a legally sufficient description of the specific land on which the well is located.

SECTION 3. Section 89.083, Natural Resources Code, is amended to read as follows:

Sec. 89.083. **FIRST LIEN ON EQUIPMENT; CAUSE OF ACTION IF COMMISSION PLUGS.** (a) If a well has not been plugged by the deadline for plugging established by commission rules, the state has a first lien, superior to all other preexisting and subsequent liens and security interests, on the operator's and nonoperator's interests in well-site equipment, in the amount of the total costs of removing well-site equipment from the well, plugging the well, and transporting, storing, and disposing of the well-site equipment.

(b) The lien arises on the date by which the well is required to be plugged under commission rules.

(c) The commission may foreclose on the lien by entering into a plugging contract. The commission is not required to give notice or an opportunity for a hearing to subordinate lienholders or nonoperators before entering into a plugging contract.

(d) The lien is extinguished if the well is plugged or otherwise brought into compliance in accordance with commission rules by any person authorized to do so before the commission enters into a plugging contract.

(e) The lien is extinguished as to any item of well-site equipment that is lawfully removed by any person other than the operator or a nonoperator pursuant to a lien, lease, judgment, written contract, or security agreement before the commission enters into a plugging contract. Equipment necessary to prevent the well from serving as a conduit for the passage of oil, gas, saltwater, oil and gas wastes, or freshwater from one stratum or formation to another or to the surface or from the surface downward may not be removed from an inactive well site except in the course of plugging in accordance with commission rules.

(f) If the commission plugs a well under Sections 89.043 through 89.044 of this code, the state has a cause of action for all reasonable expenses incurred in plugging or replugging the well and not recovered under Section 89.085 of this code or through reimbursement to the commission [according to the rules of the commission in effect at the time the well is plugged or replugged].

(g) [(b)] The cause of action is:

(1) first, against the operator, to be secured by a *first lien, superior to all preexisting and subsequent liens and security interests, on the operator's [his] interest in the oil and gas in the land and the [his] fixtures, machinery, and equipment found or used on the land where the well is located; and*

(2) second, against a [the] nonoperator at the time the well should have been plugged, to be secured by a lien on *the nonoperator's [his] interest in the oil and gas in the land. A nonoperator may be made a party defendant in the suit against the operator.*

(h) [(c)] The commission shall seek reimbursement for all reasonable expenses incurred in plugging any well through an action instituted by the attorney general.

(i) [(d)] Money collected in a suit under this section shall be deposited in the state oil-field cleanup fund.

(j) [(e)] A civil action for reimbursement under this section may be brought in Travis County, the county in which the plugged well is located, or the county in which any defendant resides.

SECTION 4. Section 89.085, Natural Resources Code, is amended to read as follows:

Sec. 89.085. POSSESSION AND SALE OF EQUIPMENT TO COVER PLUGGING COSTS[~~—CRIMINAL PENALTY~~]. (a) *When the commission enters into a contract to plug a delinquent inactive well, well-site equipment and any amount of hydrocarbons from the well that is stored on the lease are presumed to have been abandoned and may be disposed of by the commission in a commercially reasonable manner by either or both of the following methods:*

(1) *a plugging contract may provide that the person plugging or cleaning up pollution, or both, will take title to well-site equipment, hydrocarbons from the well that are stored on the lease, or hydrocarbons recovered during the plugging operation in exchange for a sum of money deducted as a credit from the contract price; or*

(2) *the well-site equipment, hydrocarbons from the well that are stored on the lease, or hydrocarbons recovered during the plugging operation may be sold at a public auction or a public or private sale.*

(b) *The commission shall assign separate costs to:*

(1) *removing well-site equipment;*

(2) *plugging the well; and*

(3) *transporting, storing, and disposing of the well-site equipment.*

(c) *The commission shall dispose of well-site equipment or hydrocarbons under this section at a price or value that reflects the generally recognized market value of the equipment or hydrocarbons, with allowances for physical condition.*

(d) *The commission shall deposit money received from the sale of well-site equipment or hydrocarbons under this section to the credit of the oil-field cleanup fund. The commission shall separately account for money and credit received for each well.*

(e) *A person who acquires well-site equipment or hydrocarbons under this section by sale or contract receives a clear title, free of all prior legal or equitable claims of whatever nature, whether perfected or inchoate.*

(f) *Not later than the 30th day after the date well-site equipment or hydrocarbons are disposed of under this section, the commission shall mail a notice by first class mail to the operator of the well at the address last reported to the commission as required by Section 91.142 of this code and commission rules and, on request, to any lienholder or nonoperator.*

(g) *The notice required by Subsection (f) of this section shall state:*

(1) *the lease name;*

(2) *the well number;*

(3) *the county in which the well is located;*

(4) *the abstract number of the property on which the lease is situated;*

(5) *the commission lease or gas well identification number or drilling permit number;*

(6) a list of the property disposed of under this section; and

(7) a statement that any person who has a legal or equitable ownership or security interest in the equipment or hydrocarbons that was in existence on the date the commission entered into a contract to plug or clean up the well may file a claim with the commission.

(h) Not later than the 180th day after the date the well-site equipment or hydrocarbons are disposed of under this section, the commission shall publish a notice that states:

(1) the lease name;

(2) the well number;

(3) the county in which the well is located;

(4) the commission lease or gas well identification number or drilling permit number; and

(5) that equipment or hydrocarbons if applicable from the well and lease were disposed of under this section and that any person who has a legal or equitable ownership or security interest in the equipment or hydrocarbons that was in existence on the date the commission entered into a contract to plug or clean up the well may file a claim with the commission.

(i) The commission shall publish the notice required under Subsection (h) of this section in a newspaper of general circulation in the county in which the lease is located. A single notice may contain the information required for more than one well and lease. A notice given under this section following the plugging of a well may be combined with a notice given under Section 91.115 of this code following the cleanup of a site or facility. [Well-site equipment is presumed abandoned if, for longer than one year, the well has shown no activity in terms of production, injection, disposal, testing, allowables, and has not otherwise been maintained in compliance with plugging rules and regulations.

[(b) Before state funds are expended to plug or replug a well that is not actively polluting but that is likely to pollute fresh water above or below the ground, the attorney general shall bring a suit within 30 days of the request of the commission seeking a declaratory judgment that well-site equipment is abandoned and that the commission has the right to possession of the equipment and the authority to sell it or otherwise dispose of it for the purpose of wholly or partially compensating the person acting as agent for the commission for plugging or replugging the well if the commission has determined that the equipment has a salvageable value greater than the cost of suit.

[(c) After state funds have been expended to plug or replug a polluting well, the attorney general shall bring a suit within 30 days of the request of the commission seeking a declaratory judgment that well-site equipment is abandoned and that the commission has the right to possession of the equipment and the authority to sell it or otherwise dispose of it for the purpose of wholly or partially reimbursing the commission for plugging or replugging the well if the commission has determined that the equipment has a salvageable value greater than the cost of suit.

[(d) Before a suit is filed as provided for in Subsections (b) and (c) of this section, the commission shall give notice as provided by the rules of civil procedure to the operator, lessor, landowner, lienholders who have recorded a security interest in the county in which the property is situated, or any other known interested party that the commission intends to seek a court order authorizing the reduction to possession and sale or disposal of the well-site equipment. The notice shall provide a description of the equipment and a statement that any claim thereto shall be made in writing to the commission within 30 days after the date that notice is given. Failure of the operator, lessor, landowner, lienholders, or other known interested party to make such claim to the equipment within the time provided shall be presumed a waiver of all right, title, and interest in the well-site equipment and their consent to entry of a judgment for possession and sale or disposal of the equipment.

[(e) If the court enters the declaratory judgment, the commission may authorize its agent to take possession of the equipment recovered following completion of plugging operations as whole or partial compensation.

~~[(f) Hydrocarbons contained in storage facilities located at the abandoned well site or recovered during plugging operations are presumed abandoned, and the commission's right to possession and authority to sell the hydrocarbons shall be included in the suit for declaratory judgment provided for in Subsections (b) and (c) of this section.~~

~~[(g) A suit for declaratory judgment under this section shall be brought in Travis County, Texas. Upon request of the attorney general, the court may appoint an attorney ad litem to represent any interests not otherwise represented before the court.~~

~~[(h) A suit under this section has priority on the court calendar as provided by Section 23.101(a), Government Code.~~

~~[(i) A person not authorized by the commission or its authorized agent who knowingly removes well-site equipment after a declaratory judgment has been obtained granting the commission possession of the equipment commits a felony of the third degree.]~~

SECTION 5. Subchapter D, Chapter 89, Natural Resources Code, is amended by adding Sections 89.086, 89.087, and 89.088 to read as follows:

*Sec. 89.086. CLAIMS AGAINST THE OIL-FIELD CLEANUP FUND. (a) A person with a legal or equitable ownership or security interest in well-site equipment or hydrocarbons disposed of under Section 89.085 of this code may make a claim against the oil-field cleanup fund unless an element of the transaction giving rise to the interest occurs after the commission enters into a plugging contract.*

*(b) The commission shall adopt a form on which a person may file a sworn claim with the commission.*

*(c) A claimant must identify the well-site equipment or hydrocarbons in which the claimant has an interest and state the amount of the property interest as of the date the commission entered into the plugging contract.*

*(d) The commission may require a person to include with a claim documentation that substantiates the claim or to disclose whether the claimant was an operator or nonoperator of the well.*

*(e) The commission may set a hearing to receive evidence on a claim filed under this section. The commission shall notify the claimant of the date, time, and place of a hearing.*

*(f) If the commission holds a hearing, the commission shall issue:*

*(1) a decision on the claim;*

*(2) a statement of findings of fact that includes the substance of the evidence heard; and*

*(3) the conclusions of law that support the decision.*

*(g) The commission shall consider the validity of claims in the order in which the claims are filed.*

*(h) The commission shall suspend an amount of money in the oil-field cleanup fund equal to the amount of the claim until the claim is finally resolved. If the provisions of Subsection (k) of this section prevent suspension of the full amount of the claim, the commission shall treat the claim as two consecutively filed claims, one in the amount of funds available for suspension and the other in the remaining amount of the claim.*

*(i) A claim made by or on behalf of the operator or a nonoperator of a well or a successor to the rights of the operator or nonoperator is subject to a ratable deduction from the proceeds or credit received for the well-site equipment to cover the costs incurred by the commission in removing the equipment or hydrocarbons from the well or in transporting, storing, or disposing of the equipment or hydrocarbons. A claim made by a person who is not an operator or nonoperator is subject to a ratable deduction for the costs incurred by the commission in removing the equipment from the well. If a claimant is a person who is responsible under law or commission rules for plugging the well or cleaning up pollution originating on the lease or if the claimant owes a penalty assessed by the commission or a court for a violation of a commission rule or order, the commission may recoup from or offset against a valid claim an expense incurred by the oil-field cleanup fund that is not otherwise reimbursed or any penalties owed. An amount recouped from, deducted from, or offset against a claim under this subsection shall be treated as an invalid portion of the*

claim and shall remain suspended in the oil-field cleanup fund in the manner provided by Subsection (j) of this section.

(j) If the commission finds that a claim is valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil-field cleanup fund not later than the 30th day after the date of the commission's decision. If the commission finds that a claim is invalid in whole or in part, the commission shall continue to suspend in the oil-field cleanup fund an amount equal to the invalid portion of the claim until the period during which the commission's decision may be appealed has expired or, if appealed, during the period the case is under judicial review. If on appeal the district court finds the claim valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil-field cleanup fund not later than 30 days after the date the court's judgment becomes unappealable. On the date the commission's decision is not subject to judicial review, the commission shall release from the suspended amount in the oil-field cleanup fund the amount of the claim held to be invalid.

(k) If the aggregate of claims paid and money suspended that relates to well-site equipment or hydrocarbons from a particular well equals the total of the actual proceeds and credit realized from the disposition of that equipment or those hydrocarbons, the oil-field cleanup fund is not liable for any subsequently filed claims that relate to the same equipment or hydrocarbons unless and until the commission releases from the suspended amount money derived from the disposition of that equipment or those hydrocarbons. If the commission releases money, then the commission shall suspend money in the amount of subsequently filed claims in the order of filing.

(l) A person who informs a potential claimant that the potential claimant may be entitled to file a claim under this section or who files a claim on behalf of a claimant may not contract for or receive from the claimant for services an amount greater than 10 percent of the paid claim.

**Sec. 89.087. JUDICIAL REVIEW OF COMMISSION DECISIONS; IMMUNITY FROM SUIT AND LIABILITY.** (a) A claimant aggrieved by the commission's decision on a claim may appeal the decision in a district court of Travis County on or before the 60th day after the date the decision was issued. If the commission does not decide a claim by the 90th day after the date it was filed, the claimant may appeal within the 60-day period beginning on the 91st day after the date of filing.

(b) Judicial review under this section is by trial *de novo*.

(c) No interest accrues on a claim before an appeal is filed under this section.

(d) Except to the extent permitted by this chapter, and notwithstanding any other provision of law, the commission, its employees or agents, and the State of Texas are immune from suit and from liability based on the disposition of well-site equipment or hydrocarbons in accordance with this chapter.

**Sec. 89.088. RECORD OF REQUEST FOR NOTICE BY LIENHOLDER OR NONOPERATOR; FORM; FEE.** (a) The commission shall maintain a record of a request for notice by a lienholder or nonoperator under Section 89.049(e) or 89.085(f) of this code for five years after the date on which the commission receives the request.

(b) The commission shall prepare a form for a request for notice. The commission shall require a person who requests notice to include on the form information that identifies the lease covered by the request.

(c) The commission may charge a filing fee for a request for notice not to exceed \$10 for each lease covered by the request.

**SECTION 6.** Section 91.111, Natural Resources Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The fund consists of:

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

(2) proceeds from bonds and other financial assurances required by this chapter, subject to the refund provisions of Section 91.1091 of this code;

- (3) private contributions, including contributions made under Section 89.084 of this code;
- (4) expenses collected under Section 89.083 of this code;
- (5) drilling permit fees imposed under Subsections (a) and (c) of Section 85.2021 of this code;
- (6) civil penalties collected for violations of Chapter 89 of this code or of rules or orders relating to plugging that are adopted under this code;
- (7) proceeds collected under Sections [~~Section~~] 89.085 and 91.115 of this code;
- (8) interest earned on the funds deposited in the fund;
- (9) fees collected under Section 91.104 of this code;
- (10) civil penalties or costs recovered under Section 91.457 or Section 91.459 of this code;
- (11) oil and gas waste hauler permit application fees collected under Section 29.015, Water Code;
- (12) costs recovered under Subsection (f) of Section 91.113 of this code;
- (13) hazardous oil and gas waste generation fees collected under Section 91.605 of this code;
- (14) oil-field cleanup regulatory fees on oil collected under Section 81.116 of this code;
- (15) oil-field cleanup regulatory fees on gas collected under Section 81.117 of this code;
- (16) fees for a reissued certificate collected under Section 85.167 of this code;
- (17) fees collected under Subsection (b) of Section 91.1013 of this code; [and]
- (18) fees collected under Section 89.088 of this code; and
- (19) legislative appropriations.

(d) All revenues and balances in the oil-field cleanup fund created in this section are exempt from Section 403.094(h) and Section 403.095(b), Government Code.

SECTION 7. Subchapter D, Chapter 91, Natural Resources Code, is amended by adding Section 91.115 to read as follows:

*Sec. 91.115. FIRST LIEN ON EQUIPMENT. (a) If a responsible person fails to clean up a site or facility that has ceased oil and gas operations under the commission's jurisdiction on or before the date the site or facility is required to be cleaned up by law or by a rule adopted or order issued by the commission, the state has a first lien, superior to all preexisting and subsequent liens and security interests, on the responsible person's interest in equipment that is:*

- (1) located at the site or facility; and
- (2) used by the responsible person in connection with the activity that generated the pollution.

(b) The lien is in the amount of the total costs of cleaning up the oil and gas wastes or other substances from the site or facility and arises on the date the site or facility is required by law or by a rule or order of the commission to be cleaned up.

(c) The commission may foreclose on the lien by entering into a contract to clean up the site or facility. The commission is not required to give notice or an opportunity for a hearing to subordinate lienholders before entering into a contract to clean up the site or facility.

(d) The lien is extinguished if the site or facility is cleaned up in accordance with commission rules by any person before the commission enters into a contract to clean up the site or facility.

(e) The lien is extinguished as to any item of equipment that is lawfully removed by any person other than the operator or a nonoperator according to a lien, lease, judgment, written contract, or security agreement before the commission enters into a cleanup contract. An item of equipment may not be removed from an abandoned site or facility if the removal will cause the release of a substance that may cause pollution unless the substance is lawfully disposed of.

*(f) Equipment subject to a lien under this section is presumed to have been abandoned on the date the commission enters into a contract to clean up the site or facility on which the equipment is located. The commission may dispose of the equipment in accordance with the provisions of Sections 89.085, 89.086, and 89.087 of this code for the disposition of well-site equipment.*

*(g) In this section "responsible person" has the meaning assigned by Section 91.113 of this code.*

SECTION 8. (a) This Act does not apply to a suit filed or an administrative proceeding begun before the effective date of this Act. A suit filed or an administrative proceeding begun before the effective date of this Act is governed by the law in effect at the time the suit was filed or the administrative proceeding was begun, and the former law is continued in effect for that purpose.

(b) The lien provided by Section 89.083, Natural Resources Code, as amended by this Act, arises on the later of the effective date of this Act or the date by which the well is required to be plugged under the rules of the Railroad Commission of Texas.

(c) The lien provided by Section 91.115, Natural Resources Code, as added by this Act, arises on the later of the effective date of this Act or the date the site or facility is required by law or by a rule or order of the commission to be cleaned up after oil and gas operations under the jurisdiction of the commission have ceased.

SECTION 9. This Act takes effect January 1, 1994.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 30, 1993, by a non-record vote; passed by the Senate on May 18, 1993, by a viva-voce vote.

Approved June 3, 1993.

Effective Jan. 1, 1994.