

The Railroad Commission adopts the repeal of §3.15, relating to Surface Casing To Be Left in Place, as part of a concurrent rulemaking proceeding to implement House Bill (HB) 2259, 81st Legislature (Regular Session, 2009), which becomes effective September 1, 2010, without changes to the proposal published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5423). HB 2259 amended the Texas Natural Resources Code to establish requirements for disconnecting electrical service, purging fluids from tanks, lines, and vessels, and removing surface equipment from inactive land wells. HB 2259 also amended the Texas Natural Resources Code to establish requirements for all operators to annually address their inventory of inactive wells to obtain approval of their yearly organization report. In a separate, concurrent rulemaking, the Commission adopts new §3.15, to be entitled Surface Equipment Removal Requirements and Inactive Wells, as well as some amendments to §§3.1, 3.14, 3.21, and 3.78, relating to Organization Report; Retention of Records; Notice Requirements; Plugging; Fire Prevention and Swabbing; and Fees and Financial Security Requirements, to address HB 2259.

The Commission received no comments on the proposed repeal.

The Commission adopts the repeal pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 89, Subchapter B-1, as enacted by HB 2259, relating to Plugging of Certain Inactive Wells; and Texas Natural Resources Code, §91.019, related to Standards for Construction, Operation, and Maintenance of Electrical Power Lines.

Texas Natural Resources Code, §§81.051 and 81.052; Texas Natural Resources Code, Chapter 89, Subchapter B-1; and Texas Natural Resources Code, §91.019, are affected by the repeal.

Statutory authority: Texas Natural Resources Code, §§81.051 and 81.052; Texas Natural Resources Code, Chapter 89, Subchapter B-1; and Texas Natural Resources Code, §91.019.

Cross-reference to statute: Texas Natural Resources Code, §§81.051 and 81.052; Texas Natural Resources Code, Chapter 89, Subchapter B-1; and Texas Natural Resources Code, §91.019.

§3.15. Surface Casing To Be Left in Place.

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

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RAILROAD COMMISSION OF TEXAS



Victor G. Carrillo, Chairman




Elizabeth A. Jones, Commissioner

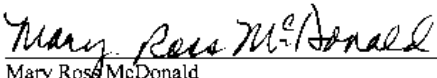


Michael L. Williams, Commissioner

ATTEST:



Secretary of the Commission



Mary Rose McDonald
Managing Director, Special Counsel
Office of General Counsel
Railroad Commission of Texas

The Railroad Commission of Texas (Commission) adopts amendments to §3.1 and §3.14, relating to Organization Report; Retention of Records; Notice Requirements; and Plugging; new §3.15, relating to Surface Equipment Removal Requirements and Inactive Wells; and amendments to §3.21 and §3.78, relating to Fire Prevention and Swabbing; and Fees and Financial Security Requirements, to implement House Bill (HB) 2259, 81st Legislature (Regular Session, 2009), which becomes effective September 1, 2010. The Commission adopts new §3.15 with changes and adopts §3.1, §3.14, §3.21, and §3.78 without changes to the proposed versions published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5407). HB 2259 amended the Texas Natural Resources Code to establish requirements for disconnecting electrical service, purging fluids from tanks, lines, and vessels, and removing surface equipment from inactive land wells. HB 2259 also amended the Texas Natural Resources Code to establish requirements for all operators to address their inventories of inactive wells annually in order to obtain approval of their yearly organization reports. The statutory amendments provide operators with three primary options for addressing their inactive land wells: restoring wells to active status; plugging wells that have no current or potential future utility; and, obtaining plugging extensions for wells that have a future utility, but economically cannot be restored to current active status.

HB 2259 amended the Texas Natural Resources Code to address two issues related to inactive land wells: (1) the dangers posed by live electrical lines routed to inactive wells; and (2) the increased costs to plug inactive wells. HB 2259 reflects the work of the Inactive Well Study Group, formed in 2007, which included associations representing both industry and landowners. HB 2259 applies only to land wells and expressly does not apply to bay and offshore wells. The purpose of the amendments to the Texas Natural Resources Code and the Commission's new and amended rules is to prevent threats to public health and safety that may result from improperly monitored and maintained inactive land wells.

The new and amended rules implement the new statutory requirements to disconnect electrical service; purge liquids from lines, tanks, and vessels; and remove surface equipment from inactive land

wells. As set forth in the amendments to the Natural Resources Code, surface equipment removal requirements are based on how long a well has been inactive. For all inactive wells, defined as those that have not reported any production or activity in the preceding 12 months, the electrical lines must be disconnected. If a well has been inactive for five years, the operator must purge all tanks, lines, and vessels of fluids. Finally, the operator must remove all surface equipment for any well that has been inactive for 10 years or longer.

The new and amended rules implement the new statutory requirements for all operators to address their inventories of inactive wells annually in order to obtain approval of their yearly organization reports. The rules provide operators with three primary options for addressing their inactive land wells: restoring wells to active status; plugging wells that have no current or potential future utility; and obtaining plugging extensions for wells that have a future utility, but economically cannot be restored to current active status.

The new and amended rules implement the new statutory requirements for plugging extensions to include blanket options that address an operator's complete inventory of inactive wells by (1) plugging or restoring to active status that number of wells equal to 10% of an operator's wells that were inactive in the 12 months prior to the filing of the organization report; (2) posting blanket financial assurance; or (3) if publicly traded, either filing with the Commission financial documents naming the Commission as secured creditor or posting a blanket bond.

Finally, the new and amended rules for plugging extensions include five options that operators can use on a well-by-well basis: (1) an operator can submit an abeyance of plugging report in which an engineer or geoscientist certifies the future beneficial use of the well with a \$100 fee; (2) if an operator is not otherwise required to file a fluid level or pressure test, the operator can file a fluid level test or a pressure test for an individual well with a \$50 fee; (3) an operator can opt to post additional financial assurance based on estimated costs to plug an individual inactive well in the form of a supplemental bond,

letter of credit or cash deposit; (4) an operator may make an annual deposit of at least 10% of the estimated cost to plug an inactive well; the Commission will hold the deposit in an escrow; and (5) an operator may certify that an individual inactive well is part of an approved enhanced oil recovery (EOR) project.

Between January 28 and March 15, 2010, the Commission published on its website the draft proposed rules to solicit informal comments. Additionally, the Commission mailed notice of the draft proposed rules to all operators. The Commission received comments from the Inactive Well Study Group, industry associations, landowner associations, and individual oil and gas companies. The Commission considered all comments and incorporated a number of the suggested changes in the amended proposal that was published in the June 25, 2010, issue of the *Texas Register*.

The Commission received one comment on the published proposed amendments and new rule from the Texas Oil and Gas Association (TXOGA). TXOGA did not specifically state its agreement with or opposition to the proposed amendments and new rule in their entirety, but made suggestions to change the wording in some provisions.

TXOGA offered two general comments. First, TXOGA suggested that throughout the amendments and new rule, the term "its delegate" should be replaced with "executive director." The Commission disagrees with this comment; the term "delegate" allows for administrative approval by any designated Commission staff rather than only the executive director. Second, TXOGA recommended that references to specific forms should be replaced with "the appropriate form" to avoid having to amend the rule any time a new form is created. The Commission disagrees with this comment as well. The reference in the rule text to the specific form to be used to meet the requirements of a rule is necessary to meet the mandate of the Administrative Procedure Act that agencies adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Regarding §3.1, TXOGA commented that the Commission should adopt a new subsection (d)(4)

which would allow operators to file an organization report 90 days prior to the deadline. If an operator does so, the Commission would be required to respond no later than 60 days prior to the renewal date with either a denial of the application or a statement disputing any element of the application package. If the Commission denies or disputes any element of the application, the operator would have 30 days to respond to the Commission. If the Commission does not deny or dispute any element of the application 60 days prior to the renewal date, the application would be considered accepted by the Commission as filed. On the renewal date, if any element of the application remained unresolved, the Commission could either renew the organization report pending resolution of unresolved matters or renew the applicant's organization report contingent on an agreed compliance order with the applicant.

The Commission disagrees with this comment. The suggested challenge process is broadly worded to allow an operator to contest any element associated with the filing of its annual renewal of its organization report, not just the wells that were classified as inactive and the time period of inactivity. Further, the question of regulatory responsibility for a specific well is already defined in Texas Natural Resources Code, §89.002, which states that upon Commission approval of the Commission form designating the operator of the well, the designated operator is responsible for regulatory compliance. The challenge process suggested in the informal comments is inconsistent with the existing statute that defines an operator's regulatory responsibility.

TXOGA also commented that the Commission should adopt a new §3.1(d)(5) which would require the Commission to provide an annual list of inactive wells so that operators know which wells must be addressed for the purpose of renewing the operator's organization report. The Commission would be required to provide the list at least three months before the renewal date of the operator's prior organization report. On or before the date the operator is required to renew the operator's organization report, an operator of an inactive well must plug or otherwise address pursuant to Commission rule the wells on the list which was provided at least three months before the renewal date of the operator's prior

organization report.

The Commission disagrees with this comment. The Commission recognizes that identification of an operator's inactive wells is necessary, but points out that operators already are given a monthly print-out in the proration schedule that identifies all wells operated by the company. Additionally, the Commission has now completed a new searchable database, available to all operators and the general public, that can provide a monthly update of an operator's inactive wells. This database, called the Inactive Well Aging Report (IWAR), can be accessed at the Commission's website through the following link: <http://www.rrc.state.tx.us/iwar/index.php>. The Commission therefore concludes that it is not necessary to adopt within the amendments to §3.1 an obligation that the Commission identify an operator's inactive wells, because that information is readily available and easily accessible as a matter of public record.

With respect to §3.14, TXOGA suggested that the Commission revise the definition of Groundwater Conservation District to be consistent with the definition found in the Texas Water Code. The Commission disagrees with this comment because the suggested change is beyond the scope of this rulemaking project.

The Commission received comments suggesting changes to the definition of "enhanced oil recovery project" as that term is defined in §3.15(a)(4) and used in §3.15(f)(2)(B)(v) and §3.15(k)(1). The Commission has determined that it is not appropriate to make changes to the definition that would be inconsistent with the definitions in Texas Natural Resources Code, §89.002, enacted by HB 2259. TXOGA also suggested revising new §3.15(a)(4), to allow projects approved under §3.46 as EOR projects. The Commission disagrees with this comment; Commission approval of an EOR project is required under the definition found in Texas Natural Resources Code, §89.002. Approval under §3.46 alone does not meet the statutory definition.

TXOGA commented that the definition of "inactive well" in §3.15(a)(6) should mirror the

language in HB 2259, reasoning that in practice there may be issues determining when a well is actually drilled and that these issues were not contemplated in HB 2259. The Commission disagrees with this comment. The Commission's definition properly includes inactive wells that have been drilled but that are not on the current proration schedule. An operator's failure to file the appropriate completion forms or other required forms is not a legal basis for an exemption from the inactive well requirements.

TXOGA commented that the Commission should revise §3.15(d)(3) to provide that the Commission may require, as a condition of approving a change of ownership, that the inactive well be addressed within six months. TXOGA asserted that the section as proposed would inhibit commerce by making sales of oil and gas assets more difficult. Wells are most often packaged for selling and are not sold individually, but because the current draft does not allow transferring of wells for six months, it will no longer be workable to purchase packages.

The Commission disagrees with this comment. The intent of HB 2259 is to require the operator of record of an inactive well to bring it into compliance using one of the three methods permitted: plugging the well, producing the well, or obtaining a plugging extension for the well. The Commission has concluded that the six-month time period for bringing an inactive well into compliance after acquisition by a new operator was not intended to be a pass-through provision which would recycle or restart the compliance period in the event of subsequent transfers.

The comments' suggestion to shift the responsibility for compliance within the six-month time period is inconsistent with the definition of the operator of a well in Texas Natural Resources Code, §89.002, and with the requirements for an operator of a well to comply with all applicable statutes, rules, and orders set forth in Texas Natural Resources Code, §89.011. It would be administratively burdensome for the Commission to distinguish those multiple sales transactions that cause concern from other types of operator transfers. The Commission finds that the proposed condition could allow operators to dispute which operator was required to comply with the rule in the event of a Commission enforcement

proceeding.

The condition of a well and its status are readily obtained through public records kept by the Commission. There is no Commission rule specifying when an entity acquiring a well must file a request to be designated as the operator of a well. Where the inactive status of a well is known, parties can negotiate provisions in the acquisition agreement that specify when a request to be designated as the operator for a specific inactive well would be filed. In other words, if the parties to an acquisition agreement are aware that some of the wells will be subject to a secondary sale, the filing of an operator designation form can be delayed until it is determined which operator will operate the well.

The Commission also finds that requiring an operator that acquires an inactive well to bring it into compliance within the six-month time period will give the operator of record an incentive to ensure that actual compliance with the inactive well rule is obtained instead of outsourced. At the very least, compliance within the six-month time period would require disclosures and consideration as part of a negotiated transaction. Finally, the Commission notes that under proposed new §3.15(m)(7), the results of a fluid level or hydraulic pressure test submitted to support an individual well plugging extension are transferable to a new operator. For these reasons, the Commission has not included the suggested changes to proposed new §3.15(d)(3).

With respect to new §3.15(f)(2)(B)(v) and (k)(1), TXOGA recommended that the Commission delete the term "commission approved" for an EOR project. The Commission disagrees with this comment. As stated in the response to TXOGA's comment on §3.15(a)(4), Commission approval of an EOR project is required; approval under §3.46 alone does not meet the statutory definition found in Texas Natural Resources Code, §89.002.

TXOGA commented that in §3.15(i)(2), the Commission should provide an opportunity for a surface owner agreement to allow storage of equipment. The Commission disagrees with this comment. Texas Natural Resources Code, § 89.029(c) requires that the Commission's rules restrict the accumulation

of equipment removed from inactive wells on active leases.

Regarding §3.15(i)(4), TXOGA suggested that, to allow an operator discretion regarding the use of equipment, the term "required for" should be deleted and the term "associated with current and future operations of" substituted in its place. The Commission agrees with this comment and adopts the clarified wording as recommended.

Regarding §3.15(i)(5), TXOGA recommended deleting the word "plugged" because the statute does not require operators to plug wells. The Commission agrees with this comment and has revised the language to note that plugging is one of three alternatives for compliance. As adopted, the paragraph reads: "For land wells that have been inactive for more than 10 years as of September 1, 2010, an operator must file documentation with its annual organization report filing to demonstrate that the operator has restored these wells to active operation; plugged and removed the surface equipment from these wells; or removed the surface equipment and obtained a plugging extension for these wells under the following schedule."

TXOGA noted that in §3.15(l)(3), the Commission should add the term "fluid level test," which appears to have been left out, and add language noting the annual requirement. The Commission disagrees with this comment. The Commission finds that for wells that are more than 25 years old and that have been inactive for more than 10 years, the requirement to perform a hydraulic pressure test is consistent with the other requirements enacted by HB 2259 for wells that have been inactive for more than 10 years.

Finally, TXOGA suggested adding language in §3.15(l)(6) and (m)(6) that allows an operator to submit the original pressure recording chart, "or its modern equivalent." The Commission agrees and adds clarifying language to permit the filing of electronic data to satisfy this requirement.

The Commission adopts amendments to §3.1 to add new subsection (d) to address organization reports for operators of inactive wells. New subsection (d)(1) implements the new statutory requirement

conditioning the approval of an operator's organization report on approval of plugging extensions for any inactive wells. New subsection (d)(2) allows the Commission to approve conditionally an organization report pending an operator's compliance with respect to a well that was inactive when approved within six months after the Commission approves the operator designation form. New subsection (d)(3) allows the Commission to revoke conditional approval of an organization report if the operator fails to bring the well into compliance within six months after the Commission approved the operator designation form.

The Commission adopts amendments to §3.14 to remove definitions and subsections related to plugging extensions that are either inapplicable or are included in new §3.15. Additionally, the provisions related to the requirement that surface casing be left in place for wells, currently addressed in §3.15, are included in §3.14(e)(5). In a separate, concurrent rulemaking, the Commission adopts the repeal of current §3.15 and here adopts a new §3.15, relating to Surface Equipment Removal Requirements and Inactive Wells. The Commission adopts new §3.15 to implement the new statutory requirements enacted by HB 2259 related to surface equipment requirements and inactive wells.

The Commission adopts new §3.15(a)(1) to include definitions related to surface equipment requirements and inactive wells. The definitions of "active operation," "good faith claim," and "operator designation form" are the same definitions currently found in §3.14. New definitions in §3.15(a)(1) include: "cost calculation for plugging an inactive well," "enhanced oil recovery (EOR) project," "inactive well," and "physical termination of electric service to the well's production site," all of which are terms defined by the new statutory requirements and are included in the definitions in the new rule for convenience.

The Commission adopts new §3.15(b) and (c) to clarify that the existing requirements for plugging, additional financial assurance, and extensions related to inactive bay and offshore wells remain unchanged. Texas Natural Resources Code §89.021, enacted by HB 2259, expressly excludes bay and offshore wells from the new surface equipment and inactive well requirements.

The Commission adopts new §3.15(d)(1) to describe the three initial options to bring an inactive land well into compliance with Commission rules. The subsection provides that an operator may plug any inactive well; restore any inactive well to active status; or obtain a plugging extension for the inactive well. New §3.15(d)(1) further specifies that an operator has six months after the operator assumes responsibility for an inactive well to bring it into compliance.

New §3.15(d)(2) specifies that a well plugging exception cannot be obtained if a well is otherwise required to be plugged by Commission rule or order.

New §3.15(d)(3) provides that the Commission will not approve a new operator designation for an inactive well submitted within the six months after the operator assumes responsibility, except to allow for a change in the operator's name.

New §3.15(d)(4) sets forth the procedure under which the Commission will revoke an operator's organization report if it fails to bring an inactive well into compliance within the six-month time period. This procedure includes providing notice to the operator of the intent to revoke the organization report and advising the operator of the opportunity to request a hearing to contest the proposed revocation. New §3.15(d)(5) identifies that for operators with delinquent or revoked organization reports, any subsequent approval of the organization report must be coupled with simultaneous approval of plugging extensions for any inactive land wells.

New §3.15(e) sets forth the requirements for obtaining a plugging extension. These requirements are currently found in §3.14 and are restated in new §3.15(e) for administrative convenience and to avoid confusion from referring to multiple Commission rules. Under the requirements, operators must obtain approval of plugging extensions; maintain a current organization report; provide evidence of a good faith claim of a continuing right to operate if requested by the Commission; maintain the well and associated facilities in compliance with all applicable Commission rules and orders; and, for inactive wells more than 25 years old, successfully conduct and obtain Commission approval of a fluid level test or

mechanical integrity test for the well.

New §3.15(f) sets forth the requirements to obtain approval of a plugging extension for an inactive land well. New §3.15(f)(1) specifies that the requirements for obtaining a plugging extension are not applicable to bay and offshore wells.

New §3.15(f)(2)(A) sets forth the surface equipment removal requirements for inactive land wells which must be met before the Commission can approve a plugging extension for a well. The required certification must be made by an individual with personal knowledge of the physical condition of the inactive well and must affirm compliance with surface requirements, including the termination of electrical service, emptying and purging of all pipes, tanks, and vessels for inactive wells more than five years old but less than ten years old, and removal of all surface equipment for inactive wells more than ten years old. If the operator owns the surface of the land on which the well is located, the operator may obtain exceptions to the requirements to purge liquids and remove surface equipment.

New §3.15(f)(2)(B) lists the alternatives an operator may choose from to obtain a plugging extension for any inactive land well. New §3.15(f)(2)(B)(i), (ii), and (iii) are the alternatives an operator can use to obtain a blanket plugging extension for all inactive land wells. These options include plugging or restoring to active status 10 % of the number of inactive land wells operated at the time of the last annual renewal of the operator's organization report; for publicly traded entities, filing copies of federal documents to comply with asset retirement obligations and a Uniform Commercial Code Form 1 Financing Statement naming the operator as a debtor and the Commission as a secured creditor in the amount of the cost calculation for plugging all inactive land wells; and filing supplemental financial assurance in the amount of the estimated cost calculation for plugging all inactive land wells or \$2,000,000. The Commission adopts a minor change in subsection (f)(2)(B)(i) to change the word "percent" to the "%" symbol.

New §3.15(f)(2)(B)(iv), (v), (vi), (vii), and (viii) set forth the alternatives an operator may select

from to obtain an individual well plugging exception. The exception alternatives include: submitting an abeyance of plugging report and payment of a \$100 annual fee; providing a statement that the well is part of a Commission-approved EOR project; conducting a successful fluid level or hydraulic pressure test, if not otherwise already required to perform such a test by Commission rule or order, and payment of a \$50 annual fee; filing individual well supplemental financial assurance in the amount at least equal to the cost calculation for plugging the specified inactive land well; and annually depositing into an escrow fund maintained by the Commission 10% of the cost calculation for plugging an inactive land well. The Commission adopts minor changes in (f)(2)(B)(viii) to change the word "percent" to the "%" symbol. New §3.15(g) provides that if the Commission administratively denies an application for a plugging extension, the operator may request a hearing by filing a request for a hearing with the Office of General Counsel no later than 30 days from the date of the administrative denial.

New §3.15(h) allows the Commission to revoke a plugging extension for an inactive land well if it determines, after notice and opportunity for hearing, that the applicant is ineligible for the extension under the Commission's rules and orders.

New §3.15(i) sets forth the requirements for the removal of surface equipment for land wells inactive for more than 10 years. The rule specifies that when removing surface equipment, operators must still comply with all other Commission rules and orders, including the requirements related to naturally occurring radioactive materials (NORM).

New §3.15(i)(1) specifies that a sign, as required under §3.3, relating to Identification of Properties, Wells and Tanks, be clearly visible at the wellhead, and that wellhead control be maintained as required under §3.13, relating to Casing, Cementing, Drilling, and Completion Requirements.

New §3.15(i)(2) prohibits the storage of surface equipment removed from an inactive land well on an active lease.

New §3.15(i)(3) allows an operator to apply for a temporary extension of the deadline for

plugging an inactive well or removing surface equipment if compliances cannot be obtained due to safety concerns or required well site maintenance. An operator must include in an application for a temporary exemption a written affirmation of the facts setting forth the safety concerns or maintenance issues.

New §3.15(i)(4) provides that an operator may be eligible for a plugging extension without complying with the surface equipment removal requirements if the inactive well is associated with an EOR project. As adopted with clarifying changes, an operator must include in its application for an exemption a written affirmation that the well is part of the EOR project and applies only to the equipment associated with current and future operations of the EOR project.

New §3.15(i)(5) sets forth the five-year phase-in period provided for in Texas Natural Resources Code, §89.029(f), to remove surface equipment from wells that have been inactive for more than 10 years as of September 1, 2010. New §3.15(i)(5) specifies the percentage of wells that must be brought into compliance in each year as a product of the total population of wells. As adopted with clarifying language, paragraph (5) requires that for land wells that have been inactive for more than 10 years as of September 1, 2010, an operator must file documentation with its annual organization report filing to demonstrate that the operator has restored these wells to active operation; plugged and removed the surface equipment from these wells; or removed the surface equipment and obtained a plugging extension for these wells under the prescribed schedule. Additionally, the rule incorporates the Commission's implementation of the requirements through review of the annual organization report filings, as opposed to requiring all operators to provide such documentation on September 1 of each calendar year.

New §3.15(i)(6) and (7) set forth requirements to remove surface equipment from wells that have been inactive for more than 10 years if the inactive land well is transferred or becomes a 10- year inactive well after September 1, 2010. In both cases, the provisions require the operator to plug the well, restore the well to active status, or bring the well into compliance with surface equipment removal requirements within six months after the transfer of the 10-year inactive date. The provisions also specify that

compliance with these requirements does not count toward fulfillment of the requirements of Texas Natural Resources Code, §89.029(f), to remove surface equipment from wells that have been inactive for more than 10 years as of September 1, 2010.

New §3.15(j) sets forth the requirements for obtaining an individual inactive well plugging extension through the abeyance of plugging report alternative. To obtain a plugging extension through this option, an operator must pay a \$100 fee; file an application on the designated Commission form; provide a certification from a licensed professional engineer or geoscientist that the well has a reasonable expectation of both an economic value in excess of the estimated plugging cost and restoration to a beneficial use that will prevent waste of oil or gas resources which would not otherwise be produced if the well were plugged; and submit documentation demonstrating the basis for the affirmation of future utility. New §3.15(j)(2) and (3) further provide that an abeyance of plugging report plugging extension may not be transferred to a new operator except in the event of a change of name of an operator.

New §3.15(k) sets forth the requirements for obtaining an individual inactive well plugging extension through the enhanced oil recovery (EOR) project alternative. An operator can obtain a plugging extension through this option if the inactive well is located on a unit or lease or in a field associated with a Commission-approved EOR project. New §3.15(k)(2) and (3) further provide that an approved EOR plugging extension may not be transferred to a new operator except in the event of a change of name of an operator.

New §3.15(l) sets forth the requirements for conducting a fluid level test on an inactive well more than 25 years old. These requirements are currently found in §3.14(b)(3). In new §3.15(l), the Commission makes two changes to the current testing requirements related to giving notice to the District Office. Under the new rule, notice to the District Office is required three days prior to the test instead of the current requirement of 48 hours. This change is consistent with the notification requirement set by statute prior to conducting a fluid level or hydraulic pressure test in an application for an inactive well

plugging extension. Second, the Commission requires that for inactive wells that are more than 25 years old and more than 10 years inactive, the operator must conduct a hydraulic pressure test once every five years.

New §3.15(m) sets forth the requirements for obtaining an individual inactive well plugging extension through the fluid level or hydraulic pressure test alternative. If an operator is not otherwise required to perform a fluid level or hydraulic pressure test by Commission rule or order, to obtain a plugging extension through this option an operator must pay a \$50 fee; provide three days notice of the test to the district office; and file documentation of the test results with the Commission's office in Austin within 30 days after the test is performed. New §3.15(m)(6) provides that if a hydraulic pressure test is performed, the results of the test are valid for five years from the date of the test. New §3.15(m)(7) provides that the results of a fluid level or hydraulic pressure test filed in support of an individual well plugging extension are transferable to a new operator.

In both new §3.15(l)(6) and §3.15(m)(6), the Commission adopts clarifying language that allows an operator to file an electronic equivalent to the paper original pressure reading chart for hydraulic pressure tests.

New §3.15(n) sets forth the requirements for obtaining an individual inactive well plugging extension through the filing of supplemental financial assurance. New §3.15(n)(1) clarifies that any supplemental financial assurance filed for an extension for an inactive land well is in addition to any other required financial assurance. New §3.15(n)(2) provides that supplemental financial assurance is not transferable. Operators acquiring an existing inactive land well must file a new supplemental financial assurance instrument.

New §3.15(o) sets forth the requirements for obtaining an individual inactive well plugging extension through the deposit of funds into a Commission-maintained escrow account. The amount of the deposit must be at least 10% of the calculated cost of plugging the well in each year this option is

requested. For example, if an operator deposits escrow funds to obtain a plugging extension for an inactive well for two consecutive years, the operator must deposit total funds equal to at least 20% of the calculated cost to plug the well. The Commission will release escrowed funds consistent with the existing requirements for the release of financial assurance set forth in §3.78, relating to Fees and Financial Security Requirements.

New §3.15(p) allows an operator to claim a future credit toward the 10% blanket plugging exception alternative if the operator plugs more than 10% of the number of its inactive land wells during a 12-month organization report cycle. The future credit is limited to plugged wells and would apply only to the next organization report renewal period. The Commission proposes this credit in response to an informal comment that allowing this credit would be an incentive for an operator to continue to plug inactive land wells during a calendar year even if the operator has already plugged enough wells to meet the 10% blanket plugging exception requirement. The Commission adopts minor changes in this subsection to change the word "percent" to the "%" symbol.

Amendments in §3.21 incorporate the requirements set forth in Texas Natural Resources Code, §91.019, relating to the operation and maintenance of electrical power lines, in a new subsection (l). Under new §3.21(l) an operator must construct, operate, and maintain an electrical power line serving a well site or other affiliated surface facility in accordance with the National Electrical Code as adopted by the Texas Department of Licensing and Regulation.

Amendments in §3.78 define the term "escrow funds" and set forth the fees required for individual inactive well plugging extensions based on an abeyance of plugging report or the filing of a fluid level or hydraulic pressure test. The Commission defines "escrow funds" in §3.78(a)(13) as funds deposited with the Commission as part of an application for a plugging extension for an inactive land well. The inactive well plugging extension fees are set forth in new §3.78(b)(13)(A) and (B).

The Commission amends §3.78(i) to set forth the conditions for the deposit of escrow funds. The

Commission will deposit all escrow funds in a special account within the Oil Field Clean Up Fund account. Any interest accruing on the deposited funds will be deposited into the Oil Field Clean Up Fund pursuant to Texas Natural Resources Code, §91.111(c)(8). The Commission will release escrow funds to the current operator of a well only if the well is either restored to active status or plugged in accordance with Commission rules. In other words, in the event of a well transfer, the Commission will release the escrow funds only to the new operator, not the operator that may have deposited the funds initially. Additionally, the Commission will release escrow funds only in the event that the current operator plugs the inactive well or restores it to active status. In the event that the well is plugged through the use of state funds, the Commission may collect from the escrow account in the amount necessary to reimburse the state for any expenditure.

The Commission adopts the amendments and new rule pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 89, Subchapter B-1, as enacted by HB 2259, relating to Plugging of Certain Inactive Wells; and Texas Natural Resources Code, §91.019, related to Standards for Construction, Operation, and Maintenance of Electrical Power Lines.

Texas Natural Resources Code, §§81.051 and 81.052; Texas Natural Resources Code, Chapter 89, Subchapter B-1; and Texas Natural Resources Code, §91.019, are affected by the new and amended rules.

Statutory authority: Texas Natural Resources Code, §§81.051 and 81.052; Texas Natural Resources Code, Chapter 89, Subchapter B-1; and Texas Natural Resources Code, §91.019.

Cross-reference to statute: Texas Natural Resources Code, §§81.051 and 81.052; Texas Natural Resources Code, Chapter 89, Subchapter B-1; and Texas Natural Resources Code, §91.019.

§3.1. Organization Report; Retention of Records; Notice Requirements.

(a) Filing requirements.

(1) Except as provided under subsection (e) of this section, no organization, including any person, firm, partnership, joint stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, acting as principal or agent for another, for the purpose of performing operations within the jurisdiction of the Commission shall perform such operations without having on file with the Commission an approved organization report and financial security as required by Texas Natural Resources Code §§91.103-91.1091. Operations within the jurisdiction of the Commission include, but are not limited to, the following:

(A)-(K) (No change.)

(2)-(6) (No change.)

(7) An organization shall refile an organization report annually according to the schedule assigned by the Commission. Prior to the filing date, the Commission shall mail notification and information to each organization for update of the organization report file. An organization shall file an amended organization report within 15 days after a change in any information required to be reported in the organization report. Only address changes may be made by letter.

(8) The Commission shall meet any requirement under statute or Commission rule for an order to be sent or notice to be given by the Commission to an organization by mailing the item to the organization's mailing address shown on the most recently filed organization report or the most recently filed letter notification of change of address. Notices sent by regular first-class mail shall be presumed to have been received if, upon arrival of the deadline for any response to the notice, the wrapper containing the notice has not been returned to the Commission. Any Commission action or proceeding for which notice is required shall go forward on the basis of the notice provided under this subsection, whether or not actual notice has been received. Service of notices and orders sent by certified mail is effective upon:

(A) acceptance of the item by any person at the address;

(B) initial failure to claim or refusal to accept the item by any person at the address prior to its eventual return to the Commission by the United States Postal Service; or

(C) return of the item to the Commission by the United States Postal Service bearing a notation such as "addressee unknown," "no forwarding address," "forwarding order expired," or any similar notation indicating that the organization's mailing address shown on the most recently filed organization report or address change notification letter is incorrect.

(9) An organization may also designate to the Commission in writing a specified address for all Commission correspondence relating to a particular district. If designated by an operator, this specified address shall be used in lieu of the organization address for any notices, other than hearing notices, pertaining to that district.

(10) The Commission may return, unapproved, to the organization address an organization report which is submitted to the Commission not fully completed according to the report's written instructions and not timely corrected. In the event that the Commission returns an organization report, all submitted financial assurances shall remain non-refundable. If an organization report approved by the Commission is found to contain information that was materially false at the time it was submitted for approval, the Commission may suspend or revoke the organization report after notice and opportunity for hearing.

(b) Record requirements. All entities who perform operations which are within the jurisdiction of the Commission] shall keep books showing accurate records of the drilling, redrilling, or deepening of wells, the volumes of crude oil on hand at the end of each month, the volumes of oil, gas, and geothermal resources produced and disposed of, together with records of such information on leases or property sold or transferred, and other information as required by Commission rules and regulations in connection with the performance of such operations, which books shall be kept open for the inspection of the Commission

] or its representatives, and shall report such information as required by the Commission to do so.

(c) Time frame. All organizations shall keep copies of records, forms, and documents which are required to be filed with the Commission, along with the supporting documents referred to in subsection (b) of this section, for a period of three years, or longer if required by another Commission rule, and any such copies may be disposed of at the discretion of such entities after the original records, forms, and documents have been on file with the Commission for the required period, except that particular documents shall be retained beyond the required period and until the resolution of pending Commission regulatory enforcement proceedings if the documents contain information material to the determination of any issues therein. All records, forms, and documents required to be filed with the Commission shall be filed in the same name, exactly as it appears on the organization report.

(d) Organization reports for operators of inactive wells.

(1) The Commission or its delegate may approve the organization report for an operator of an inactive well if the Commission or its delegate has approved an extension of the deadline for plugging the inactive well.

(2) The Commission or its delegate may conditionally approve an organization report if:

(A) the operator assumed responsibility for a well that was inactive at the time of the approval of the operator designation form for the well; and

(B) the Commission or its delegate approved the operator designation form for the inactive well less than six months prior to the date the operator is required to renew its organization report.

(3) The Commission or its delegate may revoke conditional approval of an organization report granted under paragraph (2) of this subsection after notice of opportunity for hearing if the operator has failed to meet any of the following requirements within six months after approval of the operator designation form:

(A) restoration of the well to active status as defined by Commission rule;

(B) plugging of the well in compliance with a Commission rule or order; or

(C) obtaining the approval of the Commission or its delegate of an extension of the deadline for plugging an inactive well.

(e) Issuance of permits to organizations without active organization reports.

(1) Notwithstanding contrary provisions of this section, the Commission or its delegate may issue a permit to an organization or individual that does not have an active organization report or does not ordinarily conduct oil and gas activities when the issuance of such a permit is determined to be necessary to implement a compliance schedule, or to remedy circumstances or a violation of a Commission rule, order, license, permit, or certificate of compliance relating to safety or the prevention of pollution. For permits issued under this subsection, the Commission or its delegate may impose special conditions or terms not found in like permits issued pursuant to other Commission rules. Any organization or individual who requests such a permit shall file an organization report and any other required forms for record-keeping purposes only. The report or form shall contain all information ordinarily required to be submitted to the Commission or its delegate.

(2) This section shall not limit the Commission's authority to plug or to replug wells or to clean up pollution or unpermitted discharges of oil and gas waste.

(f) Each organization required to file an organization report under subsection (a) of this section or an affiliate of such an organization that performs operations within the jurisdiction of the Commission that files for federal bankruptcy protection shall provide written notice to the Commission of that action not later than the 30th day after the date the organization or the affiliate files for bankruptcy protection by submitting the notice to the Enforcement Section of the Office of General Counsel. All bankruptcy-related notices sent to the Commission shall be submitted in writing to that section. For the purpose of this section, affiliate means an organization that is effectively controlled by another.

(g) Neither the Commission nor its delegate may approve an organization report unless the organization has complied with the state registration requirements of the Secretary of State. A tax dispute with the Comptroller of Public Accounts shall not be a basis for disapproving an organization report.

(h) Pursuant to Texas Natural Resources Code, §91.706(b), if an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been canceled, the Commission or its delegate may refuse to renew the operator's organization report required by Texas Natural Resources Code, §91.142, until the operator pays the fee required by §3.78(b)(9) of this title (relating to Fees and Financial Security Requirements) and the Commission or its delegate issues the certificate of compliance required for that well.

§3.14. Plugging.

(a) Definitions and application to plug.

(1) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(A) Approved cementer--A cementing company, service company, or operator approved by the Commission or its delegate to mix and pump cement for the purpose of plugging a well in accordance with the provisions of this section. The term shall also apply to a cementing company, service company, or operator authorized by the Commission or its delegate to use an alternate material other than cement to plug a well.

(B) Funnel viscosity--Viscosity as measured by the Marsh funnel, based on the number of seconds required for 1,000 cubic centimeters of fluid to flow through the funnel.

(C) Groundwater conservation district--Any district or authority created under §52, Article III, or §59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both.

(D) Operator designation form--A certificate of compliance and transportation authority or an application to drill, deepen, recomplete, plug back, or reenter that has been completed, signed, and filed with the Commission or its delegate.

(E) Productive horizon--Any stratum known to contain oil, gas, or geothermal resources in producible quantities in the vicinity of an unplugged well.

(F) Related piping--The surface piping and subsurface piping that is less than three feet beneath the ground surface between pieces of equipment located at any collection or treatment facility. Such piping would include piping between and among headers, manifolds, separators, storage tanks, gun barrels, heater treaters, dehydrators, and any other equipment located at a collection or treatment facility. The term is not intended to refer to lines, such as flowlines, gathering lines, and injection lines that lead up to and away from any such collection or treatment facility.

(G) Reported production--Production of oil or gas, excluding production attributable to well tests, accurately reported to the Commission or its delegate on Form PR, Monthly Production Report.

(H) Serve notice on the surface owner or resident--To hand deliver a written notice identifying the well or wells to be plugged and the projected date the well or wells will be plugged to the surface owner, or resident if the owner is absent, at least three days prior to the day of plugging or to mail the notice by first class mail, postage pre-paid, to the last known address of the surface owner or resident at least seven days prior to the day of plugging.

(I) Usable quality water strata--All strata determined by the Texas Commission on Environmental Quality or its successor agencies to contain usable quality water.

(J) Written notice--Notice actually received by the intended recipient in tangible or retrievable form, including notice set out on paper and hand-delivered, facsimile transmissions, and electronic mail transmissions.

(2)-(3) (No change.)

(4) The surface owner and the operator may file an application to condition an abandoned well located on the surface owner's tract for usable quality water production operations. The application shall be made on Commission Form P-13, the Application of Landowner to Condition an Abandoned Well for Fresh Water Production.

(A)-(B) (No change.)

(5) (No change.)

(b) Commencement of plugging operations, extensions, and testing.

(1) (No change.)

(2) Plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed unless the Commission or its delegate approves a plugging extension under §3.15 of this title (relating to Surface Equipment Removal Requirements and Inactive Wells).

(3) The Commission may plug or replug any dry or inactive well as follows:

(A) After notice and hearing, if the well is causing or is likely to cause the pollution of surface or subsurface water or if oil, gas, or other formation fluid is leaking from the well, and:

(i) neither the operator nor any other entity responsible for plugging the well can be found; or

(ii) neither the operator nor any other entity responsible for plugging the well has assets with which to plug the well.

(B) Without a hearing if the well is a delinquent inactive well and:

(i) the Commission has sent notice of its intention to plug the well as required by §89.043(c) of the Texas Natural Resources Code; and

(ii) the operator did not request a hearing within the period (not less than 10 days after receipt) specified in the notice.

(C) Without notice or hearing, if:

(i) the Commission has issued a final order requiring that the operator plug the well and the order has not been complied with; or

(ii) the well poses an immediate threat of pollution of surface or subsurface waters or of injury to the public health and the operator has failed to timely remediate the problem.

(4) The Commission may seek reimbursement from the operator and any other entity responsible for plugging the well for state funds expended pursuant to paragraph (3) of this subsection.

(c)-(d) (No change.)

(e) Plugging requirements for wells with surface casing.

(1)-(4) (No change.)

(5) An operator may not remove, cause to be removed, or allow to be removed surface casing from a well at abandonment. This prohibition applies to wells drilled by cable tool and rotary rigs alike.

(f)-(k) (No change.)

§3.15. Surface Equipment Removal Requirements and Inactive Wells.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Active operation--Regular and continuing activities related to the production of oil and gas for which the operator has all necessary permits. In the case of a well that has been inactive for 12 consecutive months or longer and that is not permitted as a disposal or injection well, the well remains

inactive for purposes of this section, regardless of any minimal activity, until the well has reported production of at least 10 barrels of oil for oil wells or 100 mcf of gas for gas wells each month for at least three consecutive months.

(2) Cost calculation for plugging an inactive well--The cost, calculated by the Commission or its delegate, for each foot of well depth plugged based on average actual plugging costs for wells plugged by the Commission for the preceding state fiscal year for the Commission Oil and Gas Division district in which the inactive well is located.

(3) Delinquent inactive well--An inactive well for which, after notice and opportunity for a hearing, the Commission or its delegate has not extended the plugging deadline.

(4) Enhanced oil recovery (EOR) project -- A project that does not include a water disposal project and is:

(A) a Commission-approved EOR 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 immiscible, miscible, chemical, thermal, or biological process;

(B) a certified project described by Texas Tax Code, §202.054; or

(C) any other project approved by the Commission or its delegate for EOR.

(5) Good faith claim--A factually supported claim based on a recognized legal theory to a continuing possessory right in a mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.

(6) Inactive well--An unplugged well that been spudded or has been equipped with cemented casing and that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.

(7) Physical termination of electric service to the well's production site--Disconnection of the electric service to an inactive well site at a point on the electric service lines most distant from the

production site toward the main supply line in a manner that will not interfere with electrical supply to adjacent operations, including cathodic protection units.

(8) Operator designation form-- A certificate of compliance and transportation authority or an application to drill, recomplete, and reenter that has been approved by the Commission or its delegate.

(b) Plugging of inactive bay and offshore wells required.

(1) An operator of an existing inactive bay or offshore well as defined in §3.78 of this title (relating to Fees and Financial Security Requirements) must:

(A) restore the well to active status as defined by Commission rule;

(B) plug the well in compliance with a Commission rule or order; or

(C) obtain the approval of the Commission or its delegate of an extension of the deadline for plugging an inactive bay or offshore well.

(2) The Commission or its delegate may not approve an extension of the deadline for plugging an inactive bay or offshore well if the plugging of the well is otherwise required by Commission rules or orders.

(c) Extension of deadline for plugging an inactive bay or offshore well. The Commission or its delegate may administratively grant an extension of the deadline for plugging an inactive bay or offshore well as defined by Commission rules if:

(1) the operator has a current organization report;

(2) the operator has, and on request provides, evidence of a good faith claim to a continuing right to operate the well;

(3) the well and associated facilities are otherwise in compliance with all Commission rules and orders; and

(4) for a well more than 25 years old, the operator successfully conducts and the

Commission or its delegate approves a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.

(d) Plugging of inactive land wells required.

(1) An operator that assumes responsibility for the physical operation and control of an existing inactive land well must maintain the well and all associated facilities in compliance with all applicable Commission rules and orders and within six months after the date the Commission or its delegate approves an operator designation form must either:

- (A) restore the well to active status as defined by Commission rule;
- (B) plug the well in compliance with a Commission rule or order; or
- (C) obtain approval of the Commission or its delegate of an extension of the

deadline for plugging an inactive well.

(2) The Commission or its delegate may not approve an extension of the deadline for plugging an inactive land well if the plugging of the well is otherwise required by Commission rules or orders.

(3) Except for an operator designation form filed for the purpose of a name change, the Commission or its delegate may not approve an operator designation form for an inactive land well submitted within the six-month compliance period of paragraph (1) of this subsection until the operator satisfies the requirements of paragraph (1)(C) of this subsection.

(4) If an operator fails to restore the well to active status as defined by Commission rule, plug the well in compliance with a Commission rule or order, or obtain an extension of the deadline for plugging an inactive well within six months after acquiring an inactive well, the Commission or its delegate may, after notice and opportunity for hearing, revoke the operator's organization report.

(5) The Commission or its delegate may approve an organization report that is delinquent

or has been revoked if the Commission or its delegate simultaneously approves extensions of the deadline for plugging the operator's inactive wells.

(e) Extension of deadline for plugging an inactive land well. The Commission or its delegate may administratively grant an extension of the deadline for plugging an inactive land well if:

(1) the Commission or its delegate approves the operator's Application for an Extension of Deadline for Plugging an Inactive Well (Commission Form W-3X);

(2) the operator has a current organization report;

(3) the operator has, and on request provides evidence of, a good faith claim to a continuing right to operate the well;

(4) the well and associated facilities are otherwise in compliance with all Commission rules and orders; and

(5) for a well more than 25 years old, the operator successfully conducts and the Commission or its delegate approves a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.

(f) Application for an extension of deadline for plugging an inactive land well.

(1) This subsection does not apply to a bay well or an offshore well as those terms are defined in §3.78 of this title.

(2) An operator must include the following in an application for an extension of the deadline for plugging an inactive well:

(A) an affirmation made by an individual with personal knowledge of the physical condition of the inactive well pursuant to the provisions of Texas Natural Resources Code, §91.143, stating the following: that the operator has physically terminated electric service to the well's production site; and either:

(i) if the operator does not own the surface of the land where the well is located and the well has been inactive for at least five years but for less than 10 years as of the date of renewal of the operator's organization report, that the operator has emptied or purged of production fluids all piping, tanks, vessels, and equipment associated with and exclusive to the well; or

(ii) if the operator does not own the surface of the land where the well is located, and the well has been inactive for at least 10 years as of the date of renewal of the operator's organization report, that the operator has removed all surface equipment and related piping, tanks, tank batteries, pump jacks, headers, fences, and firewalls; has closed all open pits; and has removed all junk and trash, as defined by Commission rule, associated with and exclusive to the well; and

(B) documentation that the operator has satisfied at least one of the following requirements:

(i) for all inactive land wells that an operator has operated for more than 12 months, the operator has plugged or restored to active operation, as defined by Commission rule, 10% of the number of inactive land wells operated at the time of the last annual renewal of the operator's organization report;

(ii) if the operator is a publicly traded entity, for all inactive land wells, the operator has filed with the Commission a copy of the operator's federal documents filed to comply with Financial Accounting Standards Board Statement No. 143, Accounting for Asset Retirement Obligations, and an original executed Uniform Commercial Code Form 1 Financing Statement, filed with the Secretary of State, that names the operator as the "debtor" and the Railroad Commission of Texas as the "secured creditor" and specifies the funds covered by the documents in the amount of the cost calculation for plugging all inactive wells;

(iii) the filing of a blanket bond on Commission Form P-5PB(2), Blanket Performance Bond, a letter of credit on Commission Form P-5LC, Irrevocable Documentary Blanket

Letter of Credit, or a cash deposit, in the amount of either the lesser of the cost calculation for plugging all inactive wells or \$2 million;

(iv) for each inactive land well identified in the application, the Commission has approved an abeyance of plugging report and the operator has paid the required filing fee;

(v) for each inactive land well identified in the application, the operator has filed a statement that the well is part of a Commission-approved EOR project;

(vi) for each inactive land well identified in the application that is not otherwise required by Commission rule or order to conduct a fluid level or hydraulic pressure test of the well, the operator has conducted a successful fluid level test or hydraulic pressure test of the well and the operator has paid the required filing fee;

(vii) for each inactive land well identified in the application, the operator has filed Commission Form W-3X and the Commission or its delegate has approved a supplemental bond, letter of credit, or cash deposit in an amount at least equal to the cost calculation for plugging an inactive land well for each well specified in the application; or

(viii) for each time an operator files an application for a plugging extension and for each inactive land well identified in the application, the operator has filed Commission Form W3-X and the Commission or its delegate has approved an escrow fund deposit in an amount at least equal to 10% of the total cost calculation for plugging an inactive land well.

(g) Administrative denial of extension. The Commission or its delegate may administratively deny an application for a plugging extension for an inactive well if it does not meet the requirements of this section. In the event of an administrative denial, an operator may request a hearing. The operator must file the request for hearing with the Office of General Counsel, Hearings Section, Docket Services, no later than 30 days from the date of the administrative denial of the application. In the request for

hearing, the operator must identify each well by its assigned American Petroleum Institute (API) number.

(h) Revocation of extension. The Commission or its delegate may revoke an extension of the deadline for plugging an inactive well if the Commission or its delegate determines, after notice and an opportunity for a hearing, that the applicant is ineligible for the extension under the Commission's rules or orders.

(i) Removal of surface equipment for land wells inactive more than 10 years. Requirements to remove surface equipment for land wells inactive more than 10 years do not excuse an operator from compliance with all other applicable Commission rules and orders including the requirements in Chapter 4 of this title (relating to Environmental Protection).

(1) An operator of an inactive land well must leave a clearly visible sign as required by §3.3 of this title (relating to Identification of Properties, Wells, and Tanks) at the wellhead of the well and must maintain wellhead control as required by §3.13 of this title (relating to Casing, Cementing, Drilling, and Completion Requirements).

(2) An operator may not store surface equipment removed from an inactive land well on an active lease.

(3) An operator may be eligible for a temporary extension of the deadline for plugging an inactive land well or a temporary exemption from the surface equipment removal requirements if the operator is unable to comply with the requirements of subsection (f)(2)(A) of this section because of safety concerns or required maintenance of the well site and the operator includes with the application a written affirmation of the facts regarding the safety concerns or maintenance.

(4) An operator may be eligible for an extension of the deadline for plugging a well without complying with the surface equipment removal requirements for inactive land wells if the well is located on a unit or lease or in a field associated with an EOR project and the operator includes a statement in the written affirmation that the well is part of such a project. The exemption provided by this

subsection applies only to the equipment associated with current and future operations of the project.

(5) For land wells that have been inactive for more than 10 years as of September 1, 2010, an operator must file documentation with its annual organization report filing to demonstrate that the operator has restored these wells to active operation; plugged and removed the surface equipment from these wells; or removed the surface equipment and obtained a plugging extension for these wells under the following schedule:

(A) at least 20% of the wells by the first renewal of the operator's organization report after September 1, 2011;

(B) at least 40% of the wells by the first renewal of the operator's organization report after September 1, 2012;

(C) at least 60% of the wells by the first renewal of the operator's organization report after September 1, 2013;

(D) at least 80% of the wells by the first renewal of the operator's organization report after September 1, 2014; and

(E) any wells remaining by the first renewal of the operator's organization report after September 1, 2015.

(6) Upon the transfer of a land well that has been inactive for more than 10 years as of September 1, 2010, to a new operator, the new operator must bring the well into compliance with the requirement to remove surface equipment not later than six months after the date the Commission or its delegate approves the Commission Form P-4 under which the new operator assumes responsibility for the well. The removal of surface equipment by a new operator after a transfer does not count toward the fulfillment of the requirements of paragraph (5) of this subsection for either operator.

(7) The operator of a land well that becomes inactive for more than 10 years after September 1, 2010, must bring the well into compliance with the requirement to remove surface

equipment prior to the next renewal of the operator's annual organization report. The removal of surface equipment from such a well does not count toward the fulfillment of the requirements of paragraph (5) of this subsection.

(j) Abeyance of plugging report.

(1) An operator that files an abeyance of plugging report must:

(A) pay an annual fee of \$100 for each inactive land well covered by the report;

(B) use Commission Form W-3X on which the operator must specify the field and the covered wells within that field; and

(C) for each well, include a certification signed and sealed by a person licensed by the Texas Board of Professional Engineers or the Texas Board of Professional Geoscientists stating that the well has:

(i) a reasonable expectation of economic value in excess of the cost of plugging the well for the duration of the period covered by the report, based on the cost calculation for plugging an inactive well;

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

(iii) documentation demonstrating the basis for the affirmation of the well's future utility.

(2) Except as provided in paragraph (3) of this subsection, the Commission or its delegate may not transfer an abeyance of plugging report to a new operator of an existing inactive land well. The new operator of an existing inactive land well must file a new abeyance of plugging report or otherwise comply with the requirements of this subchapter not later than six months after the date the Commission or its delegate approves the new operator's request to be recognized as the operator of the well.

(3) The Commission or its delegate may transfer an abeyance of plugging report in the

event of a change of name of an operator.

(k) Enhanced oil recovery (EOR) project.

(1) An inactive well is considered to be part of an EOR project if the well is located on a unit or lease or in a field associated with a Commission-approved EOR project.

(2) Except as provided in paragraph (3) of this subsection, the Commission and its delegate may not transfer a statement that an inactive well is part of an EOR project to a new operator of an existing inactive well. A new operator of an existing inactive well must file a new statement stating that the well is part of such an EOR project or otherwise comply with the provisions of this section not later than six months after the date the Commission or its delegate approves the new operator's request to be recognized as the operator of the well.

(3) The Commission or its delegate may transfer a statement that a well is part of an EOR project in the event of a change of name of an operator.

(l) Fluid level or hydraulic pressure test for inactive wells more than 25 years old.

(1) At least three days prior to the test, the operator must give the district office notice of the date and approximate time the operator intends to conduct a fluid level or hydraulic pressure test. The district office may require that a test be witnessed by a Commission employee. The district office may allow an operator to conduct a test even if notice of the test is provided to the district office fewer than three days prior to the test.

(2) No operator may conduct a test other than a fluid level or hydraulic pressure test without prior approval from the district director or the director's delegate.

(3) For each inactive well that is more than 25 years old and that has been inactive more than 10 years, the operator must have performed a hydraulic pressure test and obtained the approval of the Commission or its delegate once every five years.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, an operator may

conduct a hydraulic pressure test without prior approval from the district director or the director's delegate, provided that the operator gives the district office written notice of the date and approximate time for the test at least three days prior to the time the test will be conducted; the production casing is tested to a depth of at least 250 feet below the base of usable quality water strata or 100 feet below the top of cement behind the production casing, whichever is deeper; and the minimum test pressure is greater than or equal to 250 psig for a period of at least 30 minutes.

(5) Using Commission Form H-15, each operator must file in the Commission's Austin office the results of a fluid level test within 30 days of the date the test was performed. The results are valid for a period of one year from the date of the test. Upon request by the Commission or its delegate, the operator must file the actual test data.

(6) Using Commission Form H-5 or Form H-15, each operator must file in the district office the results of a hydraulic pressure test, including the original pressure recording chart or its electronic equivalent, within 30 days of the date the test was performed. The results are valid for a period of five years from the date of the test, unless the Commission or its delegate requires the operator to perform testing more frequently to ensure that the well does not pose a threat of harm to natural resources.

(7) An operator of an inactive well that is more than 25 years old may not return that inactive well to active operation unless the operator performs either a fluid level test of the well within 12 months prior to the return to activity or a hydraulic pressure test of the well within five years prior to the return to activity.

(m) Fluid level or hydraulic pressure test for inactive land well less than 25 years old.

(1) At least three days prior to the test, each operator must give the district office notice of the date and approximate time the operator intends to conduct a fluid level or hydraulic pressure test. The district office may require that a test be witnessed by a Commission employee. The district office may allow an operator to conduct a test even if notice of the test is provided to the district office fewer

than three days prior to the test.

(2) No operator may conduct a test other than a fluid level or hydraulic pressure test without prior approval from the district director or the director's delegate.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, an operator may conduct a hydraulic pressure test without prior approval from the district director or the director's delegate, provided that the operator gives the district office written notice of the date and approximate time for the test at least three days prior to the time the test will be conducted; the production casing is tested to a depth of at least 250 feet below the base of usable quality water strata or 100 feet below the top of cement behind the production casing, whichever is deeper; and the minimum test pressure is greater than or equal to 250 psig for a period of at least 30 minutes.

(4) An operator that files documentation of a fluid level test or a hydraulic pressure test for an inactive land well less than 25 years old in order to obtain a plugging extension must pay an annual fee of \$50 for each well covered by the documentation.

(5) Using Commission Form H-15, each operator must file in the Commission's Austin office the results of a fluid level test within 30 days of the date the test was performed. The results are valid for a period of one year from the date of the test. Upon request by the Commission or its delegate, the operator must file the actual test data.

(6) Using Commission Form H-5 or Form H-15, each operator must file in the district office the results of a hydraulic pressure test, including the original pressure recording chart or its electronic equivalent, within 30 days of the date the test was performed. The results are valid for a period of five years from the date of the test, unless the Commission or its delegate requires the operator to perform testing more frequently to ensure that the well does not pose a threat of harm to natural resources.

(7) The Commission or its delegate may transfer documentation of the results of a fluid level or hydraulic pressure test to a new operator of an existing inactive land well that is less than 25

years old.

(n) Supplemental financial assurance.

(1) A supplemental bond, letter of credit, or cash deposit filed as part of an application for an extension for an inactive land well is in addition to any other financial assurance otherwise required of the operator or for the well.

(2) The Commission or its delegate may not transfer a supplemental bond, letter of credit, or cash deposit to a new operator of an existing inactive land well. A new operator of an existing inactive land well must file a new supplemental bond, letter of credit, or cash deposit or otherwise comply with the provisions of this section not later than six months after the date the Commission or its delegate approves an operator designation form.

(o) Escrow funds.

(1) An operator must deposit escrow funds with the Commission each time the operator files an application for an extension of the deadline for plugging an inactive well.

(2) The Commission or its delegate may release escrow funds deposited with the Commission only as prescribed by §3.78 of this title.

(p) Plugging more than 10% of inactive well inventory. If an operator plugs more than 10% of the number of inactive land wells during a 12-month organization report cycle, the Commission will count the number of plugged wells above 10% toward fulfillment of the 10% blanket option under subsection (f)(2)(B)(i) of this section during the next organization report cycle.

§3.21. Fire Prevention and Swabbing.

(a)-(k) (No change.)

(l) Operation and maintenance of electrical power lines. An operator must construct, operate, and maintain an electrical power line serving a well site or other surface facility employed in

operations incident to oil and gas development and production in accordance with the National Electrical Code published by the National Fire Protection Association and adopted by the Texas Department of Licensing and Regulation in §73.100 of this title (relating to Technical Requirements).

§3.78. Fees and Financial Security Requirements.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1)-(12) (No change.)

(13) Escrow funds--Funds deposited with the Commission as part of an application for a plugging extension for an inactive land well.

(b) Filing fees. The following filing fees are required to be paid to the Railroad Commission.

(1)-(12) (No change.)

(13) Inactive well extension fee.

(A) For each well identified by an operator in an application for a plugging extension based on the filing of an abeyance of plugging report on Commission Form W3-X, the operator must pay to the Commission a non-refundable fee of \$100.

(B) For each well identified by an operator in an application for a plugging extension based on the filing of a fluid level or hydraulic pressure test that is not otherwise required to be filed by the Commission, the operator must pay to the Commission a non-refundable fee of \$50.

(14) An operator must make a check or money order for any of the aforementioned fees payable to the Railroad Commission of Texas. If the check accompanying an application is not honored upon presentment, the Commission or its delegate may suspend or revoke the permit issued on the basis of that application, the allowable assigned, the exception to a statewide rule granted on the basis of the application, the certificate of compliance reissued, or the Natural Gas Policy Act category determination

made on the basis of the application.

(15) If an operator submits a check that is not honored on presentment, the operator shall, for a period of 24 months after the check was presented, submit any payments in the form of a credit card, cashier's check, or cash.

(c)-(h) (No change.)

(i) Conditions for cash deposits and escrow funds. Operators must tender cash deposits and escrow funds in United States currency or certified cashiers check only. The Commission or its delegate will place all cash deposits and escrow funds in a special account within the Oil Field Clean Up Fund account. The Commission or its delegate will deposit any interest accruing on cash deposits and escrow funds into the Oil Field Clean Up Fund pursuant to Texas Natural Resources Code, §91.111(c)(8). The Commission or its delegate may not refund a cash deposit until either financial security is accepted by the Commission or its delegate as provided for under this section or an operator ceases all activity. The Commission or its delegate may release escrow funds to the current operator of the well only if the well for which the operator tendered the escrow funds is either restored to active status or plugged in accordance with Commission rules. In the event that the well is plugged through the use of state funds, the Commission may collect from the escrow account in the amount necessary to reimburse the state for

any expenditure.

(j)-(m) (No change.)

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

Issued in Austin, Texas, on August 24, 2010.

Filed with the Office of the Secretary of State on August 24, 2010.

RAILROAD COMMISSION OF TEXAS



Victor G. Carrillo, Chairman



Elizabeth A. Jones, Commissioner

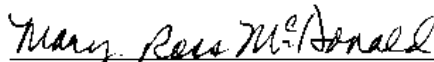


Michael L. Williams, Commissioner

ATTEST:



Secretary of the Commission



Mary Rose McDonald
Managing Director, Special Counsel
Office of General Counsel
Railroad Commission of Texas