

HB 2259 Rule Adoption (Summary)

In 2009, The 81st Texas Legislature enacted House Bill 2259 (HB 2259), effective September 1, 2010, establishing new requirements for oil and gas operators related to surface equipment removal and inactive wells. 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 connected to inactive wells; and (2) the recognition of the increased costs to plug inactive wells. HB 2259 reflects the work of the Inactive Well Study Group, formed in 2007, which included both industry associations and landowners. HB 2259 applies only to land wells (not to bay and offshore wells.)

The Railroad Commission has adopted amendments to existing Statewide Rules 1, 14, 21 and 78 to add the new statutory requirements and to add the surface equipment removal and inactive well requirements set out by HB 2259 as new Statewide Rule 15. (The previous Rule 15 was repealed and its requirements relating to surface casing to be left in place, incorporated into Rule 14.) Under new Rule 15, all operators will be required to annually address their complete inventory of inactive wells to obtain approval of their annual organization report (Form P-5).

New Statewide Rule 15 incorporates surface equipment removal requirements from HB 2259. The surface equipment removal requirements are based on how long a well has been inactive. For all wells inactive 12 months or longer, the electrical lines must be disconnected. If a well has been inactive for five years, all tanks, lines and vessels must be purged of fluids. Finally, if a well has been inactive for ten years or longer, all surface equipment must be removed. The requirements to purge fluids and remove surface equipment apply unless the operator owns the surface or obtains a waiver from the Commission based on safety or maintenance of the well site.

With respect to the surface equipment removal requirement for 10-year inactive wells in an operator's inventory as of September 1, 2010, the requirement is phased in over the next five years. This will require an operator to remove the surface equipment for 20% of its 10-year inactive wells as of September 1, 2010, in each year until all of the 10-year inactive wells in an operator's inventory have been addressed. The population of all 10-year inactive wells in Texas as of September 1, 2010, has been identified by the Commission and will be posted on the Commission's website.

Wells that become 10-year inactive wells after September 1, 2010, or that are acquired by a new operator after September 1, 2010 are not subject to the 5-year phase in period. An operator must bring those 10-year inactive wells into compliance within 6 months after the Commission recognizes the new operator of the well, or by the time the operator's annual organization report is required to be filed, whichever is later.

New Statewide Rule 15 also incorporates the statutory requirements regarding inactive well extensions. SWR 15 provides operators with eight options for addressing their inactive wells. Three of the options are blanket options which would address an operator's complete inventory of inactive wells: (1) plug or restore to active status a number of wells equal to 10% of inactive wells; (2) if publicly traded, provided financial documents to the Commission that name Commission as secured creditor; or (3) post additional blanket financial security. Of the five per-well options, two require additional fees for each inactive well: (1) filing an abeyance of plugging report with RRC which includes a \$100 fee; and (2) if an operator is not otherwise required to test the well, filing a fluid level or pressure test and pay a \$50 fee. Another two of the five per-well options allow filing of additional financial security based on estimated costs to plug an individual inactive wells in the form of: (1) a supplemental bond, letter of credit or cash deposit; or, (2) establishing an escrow account in which 10% of the estimated cost to plug the inactive well is deposited annually. The fifth per well option allows an operator to file a certification that the well is part of an approved EOR project.

If an operator acquires an inactive well from another operator, the rules give the new operator six months to bring the well into compliance with both the surface equipment removal requirements and any of the eight inactive well options. If an operator fails to bring their wells into compliance, the rules provide for revocation of the operator's organization report after notice and opportunity for hearing.

Under the adopted rules for inactive wells, operators will be able to avoid any recurring cost of compliance for an individual inactive well by plugging the well or by restoring the well to active status. Operators with a significant inventory of inactive wells will be able to apply whichever options best suit their particular circumstances either on a blanket basis, or through selecting a mixture of options addressing each individual well.

The Commission adopted the above rules on August 24, 2010. The rules will become effective on September 13, 2010, following publication in the Texas Register on September 10, 2010.

In support of operator information needs regarding these new requirements, the Commission has created the Inactive Well Aging Report ("IWAR"). The IWAR is an online query containing information on inactive wells, including the time from which the Commission calculates the relevant time periods for compliance. Inactive well data can be downloaded on a per-operator basis, or via a complete file of all inactive well data for all operators statewide. The IWAR is available on the Commission's website at <http://webapps2.rrc.state.tx.us/EWA/ewaMain.do>.