

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1732

By: Williams

AS INTRODUCED

An Act relating to oil and gas wells; creating the Oil and Gas Pollution Revolving Fund; providing for deposits and expenditures; specifying certain prohibitions; providing for a minimum balance; transferring certain funds to the Oil and Gas Pollution Revolving Fund; transferring certain obligations and encumbrances; amending 52 O.S. 1991, Sections 139 and 140, which relate to pollution abatement; changing source of funds for expenditures; amending 52 O.S. 1991, Sections 310 and 318.1, as amended by Section 2, Chapter 362, O.S.L. 1992 (52 O.S. Supp. 1992, Section 318.1), which relate to well plugging; changing source of funds for expenditures; requiring deposit of additional fee; authorizing Commission to set fee; providing for deposit of fee; repealing 17 O.S. 1991, Sections 180.7, 180.10 and Section 21, Chapter 398, O.S.L. 1992, as amended by Section 2, Chapter 401, O.S.L. 1992 (17 O.S. Supp. 1992, Section 57), which relate to the Corporation Commission Revolving Fund, the Corporation Commission Plugging Fund and the Oil and Gas Division Revolving Fund; providing for

codification; providing effective dates; and
declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 180.11 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury a revolving fund for the Corporation Commission to be designated the "Oil and Gas Pollution Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies designated for deposit to said fund. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and shall be expended by the Corporation Commission for the purposes of expeditious prevention and abatement of oil and gas pollution, the protection of correlative rights, the prevention of waste and for immediately responding to emergency situations, within the jurisdiction of the Commission, having potentially critical environmental or public safety impact. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment. No money shall be transferred or expended by the Corporation Commission for any purpose than that authorized by this section.

B. The Oil and Gas Pollution Revolving Fund shall be maintained at One Million Dollars (\$1,000,000.00). If the fund falls below the one-million-dollar maintenance level, no funds may be expended until deposits are made to the Fund to meet the maintenance level.

C. On July 1, 1993, any unallocated cash balance in the funds created in Sections 57 and 180.7 of Title 17 of the Oklahoma

Statutes shall be transferred to the Oil and Gas Pollution Revolving Fund. All outstanding financial obligations and encumbrances of the funds created in Sections 57 and 180.7 of Title 17 of the Oklahoma Statutes are hereby transferred to the Corporation Commission.

After November 15, 1993, any unexpended balance in the funds created in Sections 57 and 180.7 of Title 17 of the Oklahoma Statutes shall be transferred to the Oil and Gas Pollution Revolving Fund.

D. On July 1, 1995, any unallocated cash balance in the fund created in Section 180.10 of Title 17 of the Oklahoma Statutes is hereby transferred to the Oil and Gas Pollution Revolving Fund. All outstanding financial obligations and encumbrances of the fund created in Section 180.10 of Title 17 of the Oklahoma Statutes are hereby transferred to the Corporation Commission. After November 15, 1995, any unexpended balance in the fund created in Section 180.10 of Title 17 of the Oklahoma Statutes shall be transferred to the Oil and Gas Pollution Revolving Fund.

SECTION 2. AMENDATORY 52 O.S. 1991, Section 139, is amended to read as follows:

Section 139. A. The Corporation Commission is vested with jurisdiction, power and authority, and it shall be its duty, to make and enforce such rules, regulations and orders governing and regulating the handling, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing, refining and processing of oil and gas within the State of Oklahoma or operation of oil or gas wells in this state as are reasonable and necessary for the purpose of preventing the pollution of the surface and subsurface waters in the state, and to otherwise carry out the purpose of this act.

B. 1. For the purpose of immediately responding to emergency situations having potentially critical environmental or public safety impact and resulting from activities within its jurisdiction,

the Commission may take whatever necessary action, without notice and hearing, including the expenditure of monies from the ~~Corporation Commission~~ Oil and Gas Pollution Revolving Fund, to promptly respond to the emergency. Such emergency expenditure shall be made pursuant to the provisions of the Oklahoma Central Purchasing Act, upon such terms and conditions established by the Office of Public Affairs to accomplish the purposes of this section. Thereafter, the Commission shall seek reimbursement from the responsible person, firm or corporation for all expenditures made from the ~~Corporation Commission~~ Oil and Gas Pollution Revolving Fund. Any monies received as reimbursement shall be deposited to the credit of the ~~Corporation Commission~~ Oil and Gas Pollution Revolving Fund.

2. The Commission shall not expend from any fund in the State Treasury, in any fiscal year, for the purposes herein provided, an amount of money in excess of the total sum specifically authorized annually by the Legislature for such purposes. Any monies received by the Commission through execution on any required surety shall not be subject to such limitation on expenditure for remedial action.

3. Neither the Commission nor any independent contractor of the Commission authorized to conduct remedial action under this section shall be held liable or responsible for any damages resulting from non-negligent actions reasonably necessary for conducting remedial work. Nothing in this section shall limit the authority of the Commission or relieve any person or persons otherwise legally responsible from any obligation to prevent or remediate pollution.

SECTION 3. AMENDATORY 52 O.S. 1991, Section 140, is amended to read as follows:

Section 140. A. The Commission shall not, by a general rule, regulation, or order, prohibit the storage in earthen ponds of the deleterious substances described in Section 139 of this title, but shall by general rule, regulation, or order prescribe standards,

conditions, or limitations for the use of such ponds, and shall by rule, regulation, or order prohibit the storage of such substances in earthen ponds in areas, fields, or instances found to be required to prevent pollution.

B. If, after notice and hearing, the Commission finds that:

1. An earthen pond is subject to the provisions of this act;

2. It is a facility constructed or used for permanent storage or disposal of deleterious substances;

3. It is causing or is likely to cause the discharge of deleterious substances to the environment; and

4. The operator of said facility or any other person responsible for repairing or closing of said facility in such manner as is necessary to prevent further or future pollution cannot be found or is financially unable to pay the cost of performing said work; the Commission or any person authorized by the Commission may enter upon the land upon which the facility is located and repair, close or take such other steps as may be reasonably necessary to remedy the condition.

C. If an emergency exists or if it otherwise appears to the Commission that irreparable injury will result if immediate remedial action is not taken, said entry upon the land may be made or authorized by the Commission without notice or hearing, for the purpose of taking such temporary remedial action as the Commission considers necessary to prevent or minimize the injury, pending the giving of notice and hearing.

D. For the purpose of immediately responding to emergency situations having potentially critical environmental or public safety impact, the Commission may take whatever necessary action, without notice and hearing, including the expenditure of monies from the ~~Corporation-Commission~~ Oil and Gas Pollution Revolving Fund, to promptly respond to the emergency. Such emergency expenditure shall be made pursuant to the provisions of the Oklahoma Central

Purchasing Act, Section 85.1 et seq. of Title 74 of the Oklahoma Statutes, upon such terms and conditions established by the Office of Public Affairs to accomplish the purposes of this section. Thereafter, the Commission shall seek reimbursement from the responsible person, firm or corporation for all expenditures made from the ~~Corporation Commission~~ Oil and Gas Pollution Revolving Fund. Any monies received as reimbursement shall be deposited to the credit of the ~~Corporation Commission~~ Oil and Gas Pollution Revolving Fund.

E. When the Commission undertakes any remedial action pursuant to this section, all such remedial work shall be done by contracts let upon competitive bids; provided further that the Commission shall not expend from the Conservation Fund or any other fund in the State Treasury, in any fiscal year, for the purposes herein provided, an amount of money in excess of the total sum specifically authorized annually by the Legislature for such purposes. Any monies received by the Commission through execution on any required surety shall not be subject to such limitation on expenditure for remedial action.

F. Neither the Commission nor any independent contractor of the Commission authorized to conduct remedial action under this section shall be held liable or responsible for any damages resulting from operations reasonably necessary to:

1. Contain or remove deleterious substances discharged from a facility;
2. Repair a facility; or
3. Close a facility for abandonment.

G. Nothing in this section shall limit the authority of the Commission or relieve any person or persons otherwise legally responsible from any obligation to:

1. Properly contain and dispose of deleterious substances;
2. Repair an earthen pond; or

3. Properly close an earthen pond before abandonment. It is intended that the provisions of this section shall serve as a supplemental remedy when any person or persons obligated to do so fail or cannot be made to do so.

SECTION 4. AMENDATORY 52 O.S. 1991, Section 310, is amended to read as follows:

Section 310. A. If, after notice and hearing, the Commission finds that:

1. A well drilled for the exploration, development, or production of oil or gas, or as an injection or disposal well, is abandoned and unplugged or improperly plugged or is causing or is likely to cause surface or subsurface pollution of any fresh water or is purging or is likely to purge salt water, oil, gas, or other deleterious substances onto the surface of the land in the vicinity of the well; and

2. The operator of the well or any other person responsible for plugging, replugging, or repairing the well in such manner as is necessary to prevent further or future pollution cannot be found or is financially unable to pay the cost of performing said work, the Commission or any person authorized by the Commission may enter upon the land upon which the well is located and plug, replug, or repair the well as may be reasonably required to remedy the condition. If an emergency exists or if it otherwise appears to the Commission that irreparable injury will result if immediate remedial action is not taken, said entry upon the land may be made or authorized by the Commission without notice or hearing, for the purpose of taking such temporary remedial action as the Commission considers necessary to prevent or minimize the injury, pending the giving of notice and hearing. The operation shall be conducted in the manner prescribed by the Commission.

B. For the purpose of immediately responding to emergency situations within the Commission's jurisdiction having potentially

critical environmental or public safety impact, the Commission may take whatever necessary action, without notice and hearing, including the expenditure of monies from the ~~Corporation Commission~~ Plugging Oil and Gas Pollution Revolving Fund, to promptly respond to the emergency. Such emergency expenditure shall be made pursuant to the provisions of the Oklahoma Central Purchasing Act upon such terms and conditions established by the Office of Public Affairs to accomplish the purposes of this section. Thereafter, the Commission shall seek reimbursement from the responsible person, firm or corporation for all expenditures made from the ~~Corporation Commission~~ Plugging Oil and Gas Pollution Revolving Fund. Any monies received as reimbursement shall be deposited to the credit of the ~~Corporation Commission~~ Plugging Oil and Gas Pollution Revolving Fund.

C. If, at any time, the monies in the ~~Corporation Commission~~ Plugging Oil and Gas Pollution Revolving Fund are insufficient to cover the cost of remedial action for all wells eligible for plugging, replugging or repair under this statute, the Commission shall prioritize expenditures according to degree of actual or potential environmental harm.

SECTION 5. AMENDATORY 52 O.S. 1991, Section 318.1, as amended by Section 2, Chapter 362, O.S.L. 1992 (52 O.S. Supp. 1992, Section 318.1), is amended to read as follows:

Section 318.1 A. Any person who drills or operates any well for the exploration, development or production of oil or gas, or as an injection or disposal well, within this state, shall furnish in writing, on forms approved by the Corporation Commission, his agreement to drill, operate and plug wells in compliance with the rules and regulations of the Commission and the laws of this state, together with evidence of financial ability to comply with the requirements for plugging, closure of surface impoundments, removal of trash and equipment as established by the rules and regulations

of the Commission and by law. To establish evidence of financial ability, the Commission shall require:

1. Category A surety which shall include a financial statement listing assets and liabilities and including a general release that the information may be verified with banks and other financial institutions. The statement shall prove a net worth of not less than Fifty Thousand Dollars (\$50,000.00); or

2. Category B surety which shall include an irrevocable commercial letter of credit, cash, a cashier's check, a Certificate of Deposit, Bank Joint Custody Receipt, other negotiable instrument or, a blanket surety bond. Except as provided in paragraph 3 of subsection A of this section, amount of such letter of credit, cash, check, certificate, bond, receipt or other negotiable instrument shall be in the amount of Twenty-five Thousand Dollars (\$25,000.00) but may be set higher at the discretion of the Director of the Oil and Gas Division. The Commission is authorized to determine the amount of Category B surety based upon the past performance of the operator and its insiders and affiliates regarding compliance with the laws of this state, and any rules and regulations promulgated thereto including but not limited to the drilling, operation and plugging of wells, closure of surface impoundments or removal of trash and equipment. Any instrument shall constitute an unconditional promise to pay and be in a form negotiable by the Commission.

3. The Commission upon certification by any operator subject to Category B surety that its plugging liability statewide is less than the twenty-five-thousand-dollar standard specified in this section may allow said operator to provide Category B type surety in an amount less than the required Twenty-five Thousand Dollars (\$25,000.00), but at least sufficient to cover the estimated cost of all plugging, closure, and removal operations currently the responsibility of that operator. The liability certification

referred to in this paragraph shall take the form of an affidavit from a licensed well plugger estimating the costs of all plugging, closure, and removal operations of the operator requesting such relief. This alternative amount shall be modified upward upon the assumption of additional operations by said operator, the maximum amount of Category B surety to be posted not to exceed the twenty-five-thousand-dollar total unless as provided previously.

B. Operators of record as of the effective date of this act who do not have any outstanding contempt citations or fines and whose insiders or affiliates have no outstanding contempt citations or fines may post Category A surety.

New operators, operators who have outstanding fines or contempt citations and operators whose insiders or affiliates have outstanding contempt citations or fines as of the effective date of this act shall be required to post Category B surety. Operators who have posted Category B surety and have operated under this type surety and have no outstanding fines at the end of three (3) years may post Category A surety.

Operators using Category A surety who are assessed a fine of Two Thousand Dollars (\$2,000.00) or more and who do not pay the fine within the specified time shall be required to post a Category B surety within thirty (30) days of notification by the Commission.

C. For good cause shown concerning pollution or improper plugging of wells by the operator posting either Category A or B surety or by an insider or affiliate of such operator, the Commission, upon application of the Director of the Oil and Gas Division, after notice and hearing, may require the filing of additional Category B surety in an amount greater than Twenty-five Thousand Dollars (\$25,000.00) but not to exceed One Hundred Thousand Dollars (\$100,000.00).

D. If the Commission determines that a blanket surety bond is required, the bond shall be conditioned on the fact that the

operator shall cause the wells to be plugged and abandoned surface impoundments to be closed, and trash and equipment to be removed in accordance with the laws of this state and the rules and regulations of the Commission. Each bond shall be executed by a corporate surety authorized to do business in this state and shall be renewed and continued in effect until the conditions have been met or release of the bond is authorized by the Commission.

E. The agreement provided for in subsection A of this section shall provide that if the Commission determines that the person furnishing the agreement has neglected, failed, or refused to plug and abandon, or cause to be plugged and abandoned, or replug any well or has neglected, failed or refused to close any surface impoundment or removed or cause to be removed trash and equipment in compliance with the rules and regulations of the Commission, then the person shall forfeit from his bond, letter of credit or negotiable instrument or shall pay to this state, through the Commission, for deposit in the State Treasury, a sum equal to the cost of plugging the well, closure of any surface impoundment or removal of trash and equipment. The Commission may cause the remedial work to be done, issuing a warrant in payment of the cost thereof drawn against the monies accruing in the State Treasury from the forfeiture or payment. Any monies accruing in the State Treasury by reason of a determination that there has been a noncompliance with the provisions of the agreement or the rules and regulations of the Commission, in excess of the cost of remedial action ordered by the Commission, shall be credited to the Conservation Fund. The Commission shall also recover any costs arising from litigation to enforce this provision. Provided, before a person is required to forfeit or pay any monies to the state pursuant to this section, the Commission shall notify the person at his last-known address of the determination of neglect, failure or refusal to plug or replug any well, or close any surface impoundment

or remove trash and equipment and said person shall have ten (10) days from the date of notification within which to commence remedial operations. Failure to commence remedial operations shall result in forfeiture or payment as provided in this subsection.

F. It shall be unlawful for any person to drill or operate any oil or gas well subject to the provisions of this section, without the evidence of financial ability required by this section. The Commission shall shut in, without notice, hearing or order of the Commission, the wells of any such person violating the provisions of this subsection and such wells shall remain shut in for noncompliance until the required evidence of Category B surety is obtained and verified by the Commission.

G. The Commission, upon determination that a person operated an oil and gas well subject to the provisions of this section without the evidence of financial ability required by this section, shall in addition to meeting the requirements of subsection F of this section, require such person to pay an additional fee for deposit in the State Treasury. The Commission shall establish the amount of such fee. Any monies accruing in the State Treasury by reason of this subsection shall be credited to the Oil and Gas Pollution Revolving Fund.

H. If title to property or a well is transferred, the transferee shall furnish the evidence of financial ability to plug the well and close surface impoundments required by the provisions of this section, prior to the transfer.

~~H.~~ I. As used in this section:

1. "Affiliate" means an entity that owns twenty percent (20%) or more of the operator, or an entity of which twenty percent (20%) or more is owned by the operator; and

2. "Insider" means officer, director, or person in control of the operator; general partners of or in the operator; general or limited partnership in which the operator is a general partner;

spouse of an officer, director, or person in control of the operator; spouse of a general partner of or in the operator; corporation of which the operator is a director, officer, or person in control; affiliate, or insider of an affiliate as if such affiliate were the operator; or managing agent of the operator.

SECTION 6. REPEALER 17 O.S. 1991, Section 180.7 and Section 21, Chapter 398, O.S.L. 1992, as amended by Section 2, Chapter 401, O.S.L. 1992 (17 O.S. Supp. 1992, Section 57), are hereby repealed.

SECTION 7. REPEALER 17 O.S. 1991, Section 180.10, is hereby repealed.

SECTION 8. Sections 1 through 6 of this act shall become effective July 1, 1993.

SECTION 9. Section 7 of this act shall become effective July 1, 1995.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-1-6076

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