

## **CHAPTER 20**

# **Abandoned Well Regulatory Initiatives: An Examination of Recently Enacted Legislation in the Eastern United States**

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## § 20.01. **Introduction.**

State legislatures and regulatory agencies have had a significant level of interest in abandoned well issues for many years. Not only has this interest extended to determining when a well should be deemed to be abandoned, but also to determining how a well is to be abandoned.

At least three regulatory interests arise in the development of abandoned well regulatory programs. These sometimes competing interests include:

- (1) Conservation of the resource -- For years states have sought to protect oil and gas resources from premature depletion. By addressing the circumstances under which wells are required to be plugged, states have sought to take this objective a step further by assuring the continued access, where appropriate, to reserves that would otherwise be lost to plugging.
- (2) Revenue implications -- The premature plugging of abandoned wells will, in many states, have a direct impact on revenues received by a state.
- (3) Environmental concerns -- While abandoned wells can be a conduit through which contamination can reach water supplies, abandoned well plugging programs have developed in a way that recognizes when this

potential exists.

There can be little doubt but that environmental concerns have been among the most significant contributors to recent statutory and regulatory abandoned well initiatives. These environmental concerns are typified by the following newspaper excerpt:

From the Louisiana bayous to the arid plains of Texas and Oklahoma, thousands of oil and gas wells, abandoned at the end of their productive life, have become conduits for noxious liquids that bubble up from deep below the earth's surface to kill crops and taint drinking water.

For state governments in America's oil patch, these abandoned wells have become an expensive legacy left by a fading industry.<sup>(1)</sup>

This Chapter examines recent developments in the law applicable to abandoned oil and gas wells by focusing initially on the activities of the United States Environmental Protection Agency (EPA) and of the Interstate Oil and Gas Compact Commission (IOGCC) (formerly the Interstate Oil Compact Commission) in assessing the issues involved and in recommending solutions. Thereafter, attention turns to an analysis of three recent legislative enactments. These will be compared to the IOGCC recommendations for a model state program.<sup>(2)</sup>

## **§ 20.02. Background.**

### **[1]--EPA Report to Congress.**

Section 8002(m) of the Resource Conservation and Recovery Act<sup>(3)</sup> (RCRA) directed the EPA to perform a study of waste generated by the oil and gas industry as a part of a determination as to whether hazardous waste regulatory controls should be imposed on the management of those wastes.<sup>(4)</sup> The EPA completed this study in a Report to Congress that was filed on December 31, 1987.<sup>(5)</sup>

While the EPA's Report to Congress generally found that state regulatory programs were adequate to regulate the management of oil and gas waste, some deficiencies were noted.<sup>(6)</sup> One area of deficiency related to abandoned wells, where the EPA concluded that "groundwater damages associated with unplugged and improperly plugged abandoned wells are a significant concern."<sup>(7)</sup>

Rather than impose on the oil and gas industry the rigid and expensive federal hazardous waste regulatory program as the means of addressing concerns over abandoned wells and other oil and gas waste issues, the EPA recommended that cooperative efforts be undertaken with individual states and interstate commissions.<sup>(8)</sup>

### **[2]--IOGCC Waste Management Guidelines.**

The most significant cooperative effort undertaken by the EPA to implement the recommendations in its Report involves the IOGCC. Acting under a grant from the EPA, the IOGCC undertook a two-year project leading to the publication of a report in December 1990 that provided guidance to the EPA and the oil and gas producing states on the elements necessary for an effective state regulatory program.<sup>(9)</sup> That report made several recommendations regarding well plugging and abandonment obligations, including recommendations as to financial responsibility.<sup>(10)</sup>

These recommendations have been used by the IOGCC since their issuance as a yardstick against which individual state oil and gas regulatory programs have been compared.