

CHAPTER 19

Orphans, Foundlings and Wards of the State: Plugging Liability for Orphan and Abandoned Wells in the Eastern States

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§ 19.01. Introduction.

[1]--Historic Introduction, or Col. Drake's Orphans.

A discussion of who is or may be legally responsible for plugging so-called orphan and abandoned wells would be incomplete without at least a brief historic note about the origins of the oil and gas industry in the United States and the special significance of those origins to states like Pennsylvania, West Virginia, and Kentucky.

To begin at the beginning, consider the following excerpts from *The Prize*:

What followed immediately [after the Drake discovery well] was like a gold rush. . . . [B]y November of 1860, fifteen months after Drake's discovery, about seventy-five wells were producing with many more dry holes scarring the earth. . . .

. . . .

Nothing revealed the feverish pitch of speculation better than the strange story of the town of Pithole, on Pithole Creek, some fifteen miles from Titusville. A first well was struck in the dense forest land there in January 1865; by June, there were four flowing wells, producing two thousand barrels per day -- one third of the total output of the Oil Regions And, by that same September what had once been an unidentifiable spot in the wilderness had become a town of fifteen thousand people . . . with two banks, two telegraph offices, a newspaper, a waterworks, a fire company, scores of boarding houses and businesses, more than fifty hotels, . . . and a post office

But then, a couple of months later, the oil production abruptly gave out -- just as quickly as it had begun. . . . The town that had sprung up over-night from the wilderness was totally deserted. . . .⁽²⁾

The gold rush atmosphere, the impetus of lease terms emphasizing rapid development, and the law of capture resulted in the drilling of literally thousands of wells by the end of the 19th century. Some historical statistics more clearly make this point.

[2]--Key Historical Statistics.

[a]--Plugging and Permitting Statutes.

The Pennsylvania oil boom had been through two full boom and bust cycles by 1878, the year of its first plugging statute.⁽³⁾ In short order, plugging statutes were adopted in several eastern states while oil and gas activity and corresponding regulatory programs developed much later in other eastern regions.

As Table 1 shows, a significant span of time elapsed before plugging statutes were put in place in the early eastern oil fields. However, a look at the date of the first permitting statute in these same states shows an even more startling fact: after the adoption of plugging statutes, a much longer hiatus occurred before well permits were required. (See Table 2.)

In some cases, the requirements of bonds and plats showing well locations were added to the permitting