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Oil, Gas, and Mineral Law

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OIL, GAS, AND MINERAL LAW

by
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THIS Article surveys the significant developments of the past year in the Texas law of oil, gas, and minerals. The scope of this Article is limited to decisions by Texas and federal courts, to enactments of the Texas Legislature, and to the rules and regulations promulgated by Texas administrative agencies.[1]

I. JUDICIAL DEVELOPMENTS

A. *Surface Deposits of Minerals*

In *Schwarz v. State*[2] the Supreme Court of Texas held that minerals not expressly reserved in a patent from the State of Texas to land subject to the Relinquishment Act[3] nevertheless are reserved to the state.[4] The supreme court will not apply the surface destruction test announced in *Reed v. Wylie*[5] to conveyances from the state.[6]

Schwarz owned two tracts of land that had been classified as mineral land under the Relinquishment Act.[7] Following the terms of the Act, the State of Texas had conveyed only the surface estate in the land to Schwarz's predecessor in interest while reserving the minerals to itself. The conveyance from the state did not specifically reserve coal or lignite to the state. Acting for himself and as agent for the State of Texas under the Relinquishment Act, Schwarz leased the land in question for the purpose of coal and lignite mining.[8] The lessee began strip mining operations to extract the coal underlying the tracts. Schwarz then brought a declaratory judgment action against the

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1. The law of oil, gas, and minerals has focused historically on the exploration for and production of minerals and hydrocarbons. Pursuant to this tradition, the law of oil, gas, and minerals has not included the legal aspects of the transportation, refining, and marketing of minerals and hydrocarbons. Neither have the organization and financing of the enterprises conducting these activities been considered within the ambit of oil, gas, and mineral law. This Article preserves the traditional focus on exploration and production.
2. 703 S.W.2d 187 (Tex. 1986).
3. Ch. 81, 1919 Tex. Gen. Laws 249 (codified at TEX. NAT. RES. CODE ANN. §§ 52.171-.185 (Vernon 1978)).
4. 703 S.W.2d at 189.
5. 597 S.W.2d 743 (Tex. 1980).
6. 703 S.W.2d at 189.
7. Ch. 81, 1919 Tex. Gen. Laws 249 (codified at TEX. NAT. RES. CODE ANN. §§ 52.171-.185 (Vernon 1978)).
8. *See id.*

State of Texas, claiming that the coal and lignite deposits belonged to Schwarz under the surface destruction test. Under this test an unnamed mineral substance near the surface constitutes part of the surface estate if its extraction would consume or deplete the mineral estate.[9]

The Texas Supreme Court began its analysis by pointing out that the surface destruction test is merely a rule of construction that courts in Texas use in construing ambiguous conveyances.[10] If another rule of construction for determining the general intention of the parties exists, the supreme court is free to apply it.[11] The supreme court then chose the *Empire Gas* rule of construction,[12] which focuses on the presumed intent of the Texas legislature.[13] According to the *Empire Gas* rule, courts must strictly construe a legislative grant of property in favor of the state.[14] Citing *Empire Gas*, the *Schwarz* court held that the State of Texas intended to withhold from its conveyance all of the coal and lignite underlying the Schwarz tracts, regardless of whether the recovery of those minerals would destroy the surface of the tracts.[15]

The supreme court gave two alternate lines of reasoning in support of its holding in *Schwarz*. First, the court analyzed Mexican law that had withstood the adoption by Texas of the common law in 1840,[16] previous constitutions for the State of Texas,[17] a series of mineral release acts,[18] and the Relinquishment Act itself.[19] The court determined that the sovereign in Texas made grants of the surface estate only.[20] An express conveyance of minerals by the sovereign was necessary to vest title to the minerals in the recipient of a state land grant.[21] Second, the supreme court pointed out that the State of Texas conveyed the property to Schwarz's predecessor in interest for less than the market value of the land and that the state gratuitously granted various statutory benefits now available to surface owners of coal bearing land.[22]

After *Schwarz* Texas courts must further limit the application of the surface destruction test. The courts must now limit the application of the test

9. *See* Reed v. Wylie, 597 S.W.2d 743, 747 (Tex. 1980).
10. 703 S.W.2d at 189.
11. *Id.*
12. *Id.*
13. *See* Empire Gas & Fuel Co. v. State, 121 Tex. 138, 156-57, 47 S.W.2d 265, 272 (1932).
14. *Id.*
15. 703 S.W.2d at 189.
16. *Id.*; *see* O. HARTLEY, HARTLEY'S DIGEST OF THE LAWS OF TEXAS art. 127, at 120-21 (1850) (Act of Jan. 20, 1840, adopting common law of England and repealing certain Mexican laws).
17. 703 S.W.2d at 190; *see* TEX. CONST. art. XIV, § 7 (1876); TEX. CONST. art. X, § 9 (1869); TEX. CONST. art. VII, § 39 (1866).
18. 703 S.W.2d at 190; *see* Act of Apr. 30, 1895, ch. 127, 1895 Tex. Gen. Laws 197, 10 H. GAMMEL, LAWS OF TEXAS 927 (1898); Act of Apr. 19, 1895, ch. 47, 1895 Tex. Gen. Laws 63, 10 H. GAMMEL, Laws of Texas 793 (1898); Act of Apr. 12, 1883, ch. 88, 1883 Tex. Gen. Laws 85, 9 H. GAMMEL, LAWS OF TEXAS 391 (1879).
19. 703 S.W.2d at 191.
20. 703 S.W.2d at 191.
21. *Id.*
22. *Id.*

to the determination of ownership of minerals that the State of Texas did not reserve at the time of the original grant. The courts will continue to limit their application of the surface destruction test to minerals that are not expressly mentioned in the conveyance under examination, and that are either: (1) near surface minerals (other than coal, lignite, and iron ore) underlying land the surface estate of which was severed from its mineral estate prior to June 8, 1983; or (2) coal, lignite, and iron ore regardless of when the surface estate in the land beneath which such substances are located was severed from the mineral estate.[23]

B. Mineral Deeds

In *Altman v. Blake*[24] the Texas Supreme Court held that a conveyance of an undivided interest in the mineral estate underlying a tract of land was not the conveyance of a royalty interest of the fraction stated in the deed.[25] Even though the grantor of the interest reserved to himself the right to execute a lease encumbering the conveyed interest and the right to receive delay rentals that might become payable pursuant to a lease, the grantee received a mineral interest, not a royalty interest.[26]

The mineral deed under scrutiny in *Altman* conveyed an undivided one-sixteenth interest in and to all of the oil, gas, and other minerals in and under and that might be produced from land described by the mineral deed. The mineral deed then stated that the grantee did not participate "in any rentals or leases." The mineral deed continued with a grant to the grantee of the rights of ingress and egress at all times for the purpose of mining, drilling, exploring, operating, and developing the land for oil, gas, and other minerals, and storing, handling, transporting, and marketing the minerals, together with the right to remove from the land all of the grantee's property and improvements. The manner in which these statements were joined together in the deed suggest that the drafter selected a preprinted mineral deed form.

The land described in the mineral deed currently is under lease and is producing oil and gas. The lease reserved a landowner royalty interest of one-eighth. The grantor's successors in interest brought this suit, claiming that the mineral deed conveyed a one-sixteenth mineral interest and that the grantee's successors in interest were entitled correspondingly to one-sixteenth of the one-eighth royalty reserved under the lease. The grantee's successors in interest believed that they were entitled to a one-sixteenth royalty in the production from the lease because of the reservation in their mineral deed of the right to participate in leases and rentals.

The supreme court began its analysis of the case by stating that "[t]here are five essential attributes of a severed mineral estate: (1) the right to de-

23. *See* Friedman v. Texaco, Inc., 691 S.W.2d 586, 589 (Tex. 1985); Moser v. United States Steel Corp., 676 S.W.2d 99, 103 (Tex. 1984).
24. 712 S.W.2d 117 (Tex. 1986).
25. *Id.* at 120.
26. *Id.*

velop (the right of ingress and egress), (2) the right to lease (the executive right), (3) the right to receive bonus payments, (4) the right to receive delay rentals, (5) the right to receive royalty payments."[27] Why the supreme court omitted from this list of essential attributes the mineral owner's obligation to bear a proportionate part of the costs of developing the mineral estate is unclear. Whether the supreme court views this list of attributes as necessarily being complete is unknown. This list of attributes of a mineral interest will no doubt be one of the propositions for which *Altman v. Blake* will be cited in the future.

In *Altman* the grantee's successors in interest argued that the reservation of rights in their mineral deed effectively left them with only the right to receive royalty payments. As a consequence, the grantee's successors in interest contended, the parties to the mineral deed must have intended the grantor to convey a royalty interest equal to the fraction of one-sixteenth mentioned in the deed. In support of their contention the grantee's successors in interest argued that the reservation in their mineral deed stating that the grantee was not to "participate in any . . . leases"[28] effectively reserved to the grantor the executive right, the right to receive all bonus paid upon execution of a lease, and the right of development (or of ingress and egress).

The reasoning of the grantee's successors in interest, however, did not persuade the supreme court. The court did not construe the reservation regarding lease participation as including bonus payments, and, therefore, the grantee received the right to share in lease bonuses paid to the owners of the mineral estate.[29] The case before the court was therefore controlled by precedent that held that a mineral interest shorn of the executive right and the right to receive delay rentals was, nevertheless, a mineral interest and not a royalty interest.[30] The court left for a later decision the question of whether the *Altman* reservation also reserved the right of development in the face of express language in the mineral deed conveying the right of ingress and egress.[31] Also left for the future is the question of the critical value of the list of attributes of a mineral interest presented in *Altman*: if a mineral deed

27. *Id.* at 118. In support of this analysis the court cited R. HEMINGWAY, LAW OF OIL AND GAS §§ 2.1-.5 (1971).

28. 712 S.W.2d at 118.

29. *Id.* at 119. At this point the supreme court needed to distinguish the case before it from the case of Watkins v. Slaughter, 144 Tex. 179, 189 S.W.2d 699 (1945), which held that a deed that ostensibly conveyed a one-sixteenth mineral interest, yet retained the executive right, bonuses, and delay rentals, had in fact conveyed a one-sixteenth royalty interest. The *Watkins* grantor also referred later in his deed to the interest being conveyed as a royalty interest. In order to ally the case before it with the more attractive precedent offered by Delta Drilling Co. v. Simmons, 161 Tex. 122, 338 S.W.2d 143 (1960), the supreme court needed to find that the *Altman* reservation covered only the executive right and delay rentals, and did not reserve bonuses. This commentator believes that the court correctly decided *Altman v. Blake*, but that the list of five attributes for a mineral interest was a dubious starting point for the court's analysis and that counsel for the parties perhaps could have suggested another.

30. 712 S.W.2d at 119; *see* Delta Drilling Co. v. Simmons, 161 Tex. 122, 127, 338 S.W.2d 143, 147 (1960); Grissom v. Guertesloh, 391 S.W.2d 167, 169 (Tex. Civ. App.—Amarillo 1965, writ ref'd n.r.e.); Etter v. Texaco, Inc., 371 S.W.2d 702, 706 (Tex. Civ. App.—Waco 1963, writ ref'd n.r.e.).

31. 712 S.W.2d at 119.

retains the executive right, bonuses, delay rentals, and the right of development for the grantor, would the interest conveyed even then be a royalty interest?

C. Division Orders

In *Gavenda v. Strata Energy, Inc.*[32] the Texas Supreme Court held that erroneous division and transfer orders are not binding on underpaid royalty owners during the period prior to the revocation of the orders to the extent that the payor benefited from the amount of the underpayment.[33] The Gavenda family owned a term royalty interest entitled to fifty percent of the production from a tract of land in Burleson County, Texas. Three years before the expiration of their term royalty interest, Strata Energy, Inc. drilled a producing well on the property. The operator of the lease prepared the division orders based on an erroneous title opinion. This opinion gave the Gavendas one-half of the landowner royalty interest of one-eighth that the holder of the executive right for the tract had reserved in the oil and gas lease.

The Gavenda family signed these division orders without dispute, and subsequent transfer orders perpetuated the error. The subsequent transfer orders documented changes in ownership within the Gavenda family. Two days before the expiration of their term royalty interest the Gavendas discovered the error and revoked the division and transfer orders. Shortly thereafter, the family brought suit against the working interest owners to recover underpaid royalties in excess of two million dollars. The working interest owners argued in their defense that division and transfer orders are binding upon royalty owners until revoked.

The Texas Supreme Court confirmed that division and transfer orders are binding upon underpaid royalty owners until revoked, but only as a general rule.[34] In the typical case, according to the supreme court, the correct total of proceeds is paid out to royalty owners as a group and any errors made in the division orders affect only the allocation of proceeds among the royalty owners.[35] The appropriate remedy for an underpaid royalty owner in such a situation is a claim against the overpaid royalty owners based on the legal concept of unjust enrichment.[36] To permit an underpaid royalty owner in such a situation to recover from the operator or purchaser would subject the payor to double liability for the overpaid amount.[37] The supreme court concluded that the general rule that division and transfer orders are binding on royalty owners until revoked is based in part on the detrimental reliance of the payor.[38]

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32. 705 S.W.2d 690 (Tex. 1986).
33. *Id.* at 692.
34. *Id.*; *see* Exxon Corp. v. Middleton, 613 S.W.2d 240, 250 (Tex. 1981); Chicago Corp. v. Wall, 156 Tex. 217, 223, 293 S.W.2d 844, 847 (1956).
35. 705 S.W.2d at 692.
36. *Id.*
37. *Id.*
38. *Id.* at 691-92.

The general rule will give way to a claim by an underpaid royalty owner against his payor when the payor personally benefits from the erroneous division orders.[39] This personal enrichment of the payor, the supreme court pointed out,[40] distinguishes *Stanolind Oil & Gas Co. v. Terrill*[41] from the cases supporting the general rule. Through an erroneous division order Stanolind Oil & Gas Co. shifted a gross production tax from itself to a royalty owner, and, thus, unjustly enriched itself.[42]

The *Gavenda* court had a more difficult time reconciling its decision in *Exxon Corp. v. Middleton*[43] with the analysis propounded in *Gavenda*. In *Middleton* the supreme court held that division orders were binding until revoked, even though the error did not affect the allocation of proceeds among royalty owners.[44] In the *Gavenda* court's view the *Middleton* payors did not rely on the orders to their detriment.[45] The supreme court stated that the payors in *Middleton*, in addition, had not benefited from the discrepancy between the leases, which provided for a gas royalty based on the fair market value of the gas, and the division orders, which had provided for a gas royalty based on the actual proceeds received on the sale of the gas.[46] The fact remains, however, that the payors had a smaller total royalty burden under the erroneous division orders than they did under the leases and, thus, benefited from the erroneous division orders.[47] The lesson one might learn from the *Gavenda* court's treatment of *Middleton* is that one cannot apply the holding of a case free of its historical context when that context was the effort by the Texas Supreme Court over several years to limit the force of its holding in *Texas Oil & Gas Corp. v. Vela*.[48]

On the basis of its analysis the *Gavenda* court held that the working interest owners were liable to the Gavendas for the portion of the correct Gavenda royalties that the working interest owners received.[49] The working interest owners, however, were not liable to the Gavendas for the portion of the true Gavenda royalties that they had paid to other royalty owners, including overriding royalty owners.[50]

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39. *Id.* at 692.
40. *Id.*
41. 183 S.W.2d 743 (Tex. Civ. App.—Galveston 1944, writ ref'd).
42. *Id.* at 745.
43. 613 S.W.2d 240 (Tex. 1981).
44. *Id.* at 250.
45. 705 S.W.2d at 692.
46. *Id.*
47. The supreme court may have been focusing on the initial years of the *Middleton* royalty payments when the market value of the gas sold was about the same as the long-term contract price to which the gas was subject. At this point the discrepancy between the erroneous division orders and the leases in question may have been negligible. Only in later years, one might guess, did the market price of gas rise sufficiently to make the discrepancy between division orders and lease provisions an economic benefit to the lessees.
48. 429 S.W.2d 866 (Tex. 1968).
49. 705 S.W.2d at 693.
50. *Id.*

D. Cotenants

In *Byrom v. Pendley*[51] the Texas Supreme Court held that a cotenant has the right to drill a well and produce oil and gas from the land in which the cotenant owns an undivided interest in the mineral estate, even though the drilling cotenant is disputing another cotenant's title to an interest in the mineral estate.[52] This right is subject to the drilling cotenant's duty to account to the other cotenant for a proportionate part of the oil and gas produced less a proportionate part of the drilling and operating expenses.[53]

C.W. Byrom was the lessee under a lease covering an undivided one-half interest in a tract of land in Eastland County, Texas.[54] Byrom also held a lease covering the other undivided one-half interest in the tract, but this second lease was subordinate to a lease given six months earlier to Paul Pendley. The Pendley lease contained an insufficient property description, and, during the course of a lawsuit brought by Pendley to reform the lease to describe the land correctly, Byrom sought to have the Pendley lease declared void. Byrom also drilled and completed a producing oil well during this period. The purchaser of production escrowed the proceeds of production attributable to the disputed interest. Pendley won his suit for reformation and was recognized as the lessee of the remaining one-half interest in the tract. Byrom then brought this suit for the purpose of recovering from the escrowed funds one-half of the costs of drilling and operating the producing well on the property.

The supreme court held for Byrom in his suit to recover one-half of the costs of drilling and operating the well.[55] The supreme court first affirmed the rule that a cotenant has the right to extract minerals from common property without first obtaining the consent of his cotenants.[56] According to the supreme court, this rule is based on the rights of each cotenant to enter upon the common estate and to possession.[57] The supreme court saw no distinction between a cotenant who drills without the consent of his cotenant and a cotenant who drills while asserting that his cotenant's lease is defective.[58]

Pendley, on the other hand, argued that he was entitled to retain all of the escrowed funds. In support of his position, Pendley cited *Humble Oil & Refining Co. v. Kishi.*[59] In *Kishi* Humble Oil, believing itself the lessee of all interests in a tract of land, entered onto the property for the purpose of drilling a well. Kishi, as one of the interest owners, informed Humble that the lease had expired, but did not otherwise attempt to stop Humble's opera-

51. 717 S.W.2d 602 (Tex. 1986).
52. *Id.* at 605.
53. *Id.*
54. The facts of this case have been simplified for this discussion.
55. 717 S.W.2d at 605.
56. *Id.* In support of this rule the supreme court cited Cox v. Davison, 397 S.W.2d 200, 201 (Tex. 1965); and Burnham v. Hardy Oil Co., 147 S.W. 330, 334-35 (Tex. Civ. App.—San Antonio), *aff'd on other grounds,* 108 Tex. 555, 195 S.W. 1139 (1917).
57. 717 S.W.2d at 605.
58. *Id.*
59. 276 S.W. 190 (Tex. Comm'n App. 1925, judgment adopted), *reh'g granted,* 291 S.W. 538 (Tex. Comm'n App. 1927, holding approved).

tions. Humble did have the consent of the other interest owner. After Humble drilled the well and determined that it was a dry hole, Kishi sued Humble for his proportionate part of the hypothetical bonus payment the interest owners would have received from leasing the property immediately prior to Humble's operations.[60] The Texas Commission of Appeals held Humble liable for a proportionate part of the hypothetical bonus.[61] The commission stated that Humble's entry upon the land, if it had been as a cotenant of Kishi, would have been lawful and would have resulted in no injury to Kishi's property value.[62] Humble's entry upon the land was unlawful, however, because Humble made the entry in denial of Kishi's right.[63]

Pendley's argument, however, did not persuade the Texas Supreme Court. The court construed the *Kishi* decision as holding that a lessee of mineral interests who enters upon the land after the lessee's lease and its right to enter have terminated is liable to his nonconsenting lessor for injury resulting from such unlawful entry.[64] The *Kishi* decision will apply only to cases dealing with a wrongful claim by a lessee against his lessor after termination of the right to enter.[65]

II. LEGISLATION

The Texas Legislature enacted a measure dealing with the collection of royalties due to the state from leases of state land or minerals.[66] Procedures are now in place for the redetermination by the state of oil and gas royalties due to the state treasury. These procedures include the issuance of an audit billing notice to the lessee and a hearing at the request of the lessee to dis-

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60. Oil had been discovered on an adjacent tract, and evidence was introduced at trial of the amount of possible bonus.

61. 291 S.W. at 539.

62. *Id.*

63. *Id.*

64. 717 S.W.2d at 605.

65. *Id.* Should *Kishi* be overruled? The trial court in *Kishi* stated in its conclusions of law:

> [O]rdinary prudence would deter any practical oil operator from risking the outlay for drilling wells on land where he was conscious of being only a trespasser, and therefore not entitled to enjoy the fruits of his investment. In the exceptional cases, or where the parties are in doubt as to their rights, such trespasses can always be prevented or remedied by proper process if the owner does not choose to enjoy the advantage of explorations made at the trespasser's expense. For the owner to take his chances of oil discovery by explorations of a trespasser, all of which would inure to the benefit of the owner if the exploration developed oil, and at the same time to hold in reserve the purpose to make such explorer pay, in case of failure, the value which speculators would have been willing to pay before the test for the chance of oil being discovered, would not be allowable under any theory of mere compensation. In such a case the owner has enjoyed his chance, and therefore could not recover for the value of such chance as a lost one. Viewed in the light of circumstances as they existed before completion of the test, nothing could have been shrewder on plaintiff's part than to guard himself carefully against estoppel, as was done, and await the result of exploration made at the expense of a trespasser.

Kishi v. Humble Oil & Ref. Co., 261 S.W. 224, 231 (Tex. Civ. App.—Beaumont 1924).

66. *See* TEX. NAT. RES. CODE ANN. § 52.135 (Vernon Supp. 1987).

pute the redetermination.[67] A lessee who fails to convince the Commissioner of the General Land Office that a redetermination is not justified has the right to pay the additional royalties in protest and then to bring suit to recover those additional royalties with interest.[68]

The lessee must meet fairly precise requirements to bring such a suit. First, the lessee must pay the additional royalties within thirty days of the date of receipt of the audit billing notice or the date of receipt of the final order of the commissioner following a hearing.[69] Second, the lessee must submit a detailed, written protest with the payment.[70] Finally, the suit must be brought in the district court of Travis County within ninety days after the date of the protest payment or within ninety days after the date of the final order of the commissioner following the hearing, whichever is later.[71] The only issues a court may decide in a suit brought under this measure are those arising from the reasons stated in the written protest as originally filed.[72]

III. Rules and Regulations

The Railroad Commission of Texas modified a number of its rules governing the oil and gas industry and adopted several new ones. Most of these changes resulted from enactments of the Texas Legislature, and the remaining changes are, in part, a response to depressed economic conditions in the industry. One of the new rules is intended to qualify the commission for participation in a federal program.

As a result of changes in state law, the Railroad Commission amended its statewide rule regarding gas well allowables. The commission's stated intention in adopting these amendments is to permit operators greater flexibility in satisfying market demand for natural gas.[73] The amendments provide for: the carrying forward of underproduction not balanced in a second balancing period; reduced rate production as an alternative to the shutting in of overproduced wells; production in excess of twice a well's allowable when the well is producing against accrued underproduction; and, in the discretion of the commission, an administrative special allowable equal to a well's deliverability for a well that demonstrates a deliverability of 100,000 cubic feet or less per day.[74]

The Railroad Commission amended several of its statewide rules to implement last year's legislation that requires the filing of electric logs with the commission,[75] informational filings with the commission by entities under

67. *Id.* § 52.135(b).
68. *Id.* §§ 52.137-.138.
69. *Id.* § 52.137(a).
70. *Id.*
71. *Id.* § 52.137(c).
72. *Id.* § 52.137(d).
73. Tex. R.R. Comm'n, 10 Tex. Reg. 5009 (1985) (amending 16 TEX. ADMIN. CODE § 3.31).
74. *Id.*
75. Tex. R.R. Comm'n, 11 Tex. Reg. 544 (1986) (amending 16 TEX. ADMIN. CODE §§ 3.6, 3.16, 3.41). The legislation appears at TEX. NAT. RES. CODE ANN. §§ 91.551-.556

the commission's jurisdiction,[76] and the payment of fees at the time that applications are made for exceptions to statewide rules.[77] The commission also amended its statewide rule 8, regarding water protection, to conform several definitions with recent changes to the Texas Natural Resources Code and to clarify the requirements for giving notice of a permit application.[78]

The Railroad Commission's extensive new rule 3.75 is designed to prevent the discharge of wastes and other substances and materials associated with the exploration, development, and production of oil, gas, or geothermal resources from polluting surface and subsurface water in Texas.[79] The new rule is also designed to gain the approval of the Environmental Protection Agency for the commission's conducting of a portion of the National Pollutant Discharge Elimination System Program.[80] The Environmental Protection Agency commented on the rule at an earlier stage in the commission's rule making.[81]

With the goal of preventing the loss of reserves through the premature abandonment of marginal wells, the Railroad Commission adopted an amendment to its rule on the plugging of wells. The rule now allows the operators of wells that become inactive on or after January 1, 1986, but before January 1, 1988, to have one year instead of the usual ninety days in which to plug or otherwise bring their wells into compliance.[82] The commission also amended its rules regarding drilling applications to allow an operator of an existing well to request authorization to deepen the well inside the casing or to plug back the well to test other reservoirs before going through the complete permit application process.[83] One of the commission's goals in amending its rules about drilling permits was to furnish an incentive to operators to test marginal zones before abandoning a well.[84]

(Vernon Supp. 1987). For a summary of the legislation see Laity, *Oil, Gas, and Minerals, Annual Survey of Texas Law*, 40 Sw. L.J. 365, 373 (1986).

76. Tex. R.R. Comm'n, 11 Tex. Reg. 700 (1986) (amending 16 TEX. ADMIN. CODE § 3.1).

77. Tex. R.R. Comm'n, 11 Tex. Reg. 900 (1986) (amending 16 TEX. ADMIN. CODE §§ 3.5, 3.11, 3.13, 3.14, 3.15, 3.26, 3.27, 3.45, 3.55, and codifying *id.* § 3.78).

78. Tex. R.R. Comm'n, 11 Tex. Reg. 948 (1986) (amending 16 TEX. ADMIN. CODE § 3.8).

79. Tex. R.R. Comm'n, 11 Tex. Reg. 701 (1986) (codified at 16 TEX. ADMIN. CODE § 3.75).

80. *Id.*

81. *See id.* at 704.

82. Tex. R.R. Comm'n, 11 Tex. Reg. 3792 (1986) (amending 16 TEX. ADMIN. CODE § 3.14).

83. Tex. R.R. Comm'n, 11 Tex. Reg. 4214 (1986) (amending 16 TEX. ADMIN. CODE § 3.5).

84. *Id.*