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AN ACT PROVIDING FOR PLUGGING OF ABANDONED OIL AND GAS WELLS:

OKLA. STAT. tit. 52, §318.1 (1971).

A considerable body of environmental law has already been promulgated to cope with the increasingly large number of pollution problems. Oklahoma is particularly blessed with an abundance of minerals, specifically oil and gas, and is, as a consequence thereof, burdened by an inordinate number of pollution control problems. As a result, the present statute was enacted to control the drilling and plugging of wells and to provide penalties for failure to comply with said statute.

The present statute was enacted following the decision in *Cleary Petroleum v. Copenhagen*,¹ wherein the plaintiff's cattle had been injured by drinking water emanating from the defendant's plugged and abandoned well. Although money damages were allowed for the subsequent decrease in the market value of the cattle, this solution did not remedy the fundamental problem—the pollution released from the improperly plugged well.

Consequently, the present statute² was enacted. The act provides that any individual who fails to plug or replug any well in compliance with the Corporation Commission's rules, shall forfeit or pay to the state an amount equal to the cost of plugging the well. The Corporation Commission, itself, has the power to order such remedial work. This provision places the burden of pollution control properly upon the initiating source of the pollution. Prior to this statute the possibility of the state assuming the cost of plugging was almost eliminated, as the average cost of replugging a well was eighteen hundred dollars.

Although such a solution is adequate in regard to wells

¹ 476 P.2d 327 (Okla. 1970).

² OKLA. STAT. tit. 52, §318.1 (1971).

presently being drilled, it fails to assume or delegate the responsibility for the untold hundreds of unplugged wells in the state which are a legacy of the heyday of the oil industry. Many of the companies responsible have since passed from the industrial scene, and therefore operational responsibility cannot be assessed. The physical hazards generated by unplugged wells also present a constant threat to public safety. And yet, the landowner cannot be forced to assume the financial burden of this remedial work; nor can contractors be engaged upon the promise of payment when the state receives reimbursement. Perhaps the solution as to previously drilled and abandoned wells might be a jointly sponsored federal and state project.

A further provision of the enacted legislation provides for the furnishing of a statement of the drilling company's financial responsibility to the Corporation Commission. However, unless the proof of financial responsibility to the Corporation Commission is accepted in most cases, the burden upon small producers in marginal operations is inequitable. This is evident when one considers the large debt-to-asset ratio that such a small company will have. A similar provision as to statements of financial responsibility, which was required in New York, has proved ineffective.³

Oklahoma follows at least twelve other states (Arkansas, California, Colorado, Indiana, Idaho, Iowa, Kansas, Kentucky, Texas, Utah, Virginia, and West Virginia) in requiring that dry or abandoned wells must be plugged in order to prevent pollution above or below the ground.

Liability under §318.1 is based primarily upon the theory of negligence, although breach of a statutory duty, or breach of a contractual duty might be asserted. However, although the primary utilization of the theory of negligence is prevalent in a majority of other jurisdictions, Oklahoma's provision is

³ See Mowbray, *Regulation of Oil and Gas Producers in New York*, 32 ALBANY L. REV. 387 (1968).