

No. 1986-135

AN ACT

HB 1375

Amending the act of December 19, 1984 (P.L.1140, No.223), entitled "An act relating to the development of oil and gas and coal; imposing duties and powers on the Department of Environmental Resources; imposing notification requirements to protect landowners; and providing for definitions, for various requirements to regulate the drilling and operation of oil and gas wells, for gas storage reservoirs, for various reporting requirements, including certain requirements concerning the operation of coal mines, for well permits, for well registration, for distance requirements, for well casing requirements, for safety device requirements, for storage reservoir obligations, for well bonding requirements, for a Well Plugging Restricted Revenue Account to enforce oil and gas well plugging requirements, for the creation of an Oil and Gas Technical Advisory Board, for oil and gas well inspections, for enforcement and for penalties," changing the definition of "owner"; further defining "well" and "well operator"; and further providing for the definition of "alteration" and for permit objections, well permits and bonding requirements; adding provisions relating to solid waste; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definitions of "alteration," "owner," "well" and "well operator" in section 103 and sections 201(a), 202(a) and 215 of the act of December 19, 1984 (P.L.1140, No.223), known as the Oil and Gas Act, are amended to read:

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Alteration." Any operation which changes the physical characteristics of the well bore, including stimulation or removing, repairing or changing the casing: Provided, however, That, for the purpose of this act only, the term shall not include:

(1) repairing or replacing of casing with casing of the same diameter and length in noncoal areas;

(2) repairing or replacing of production casing with casing of the same or smaller diameter and length **[in noncoal areas];** *Provided, however, That this exclusion shall not apply to production casings in coal areas when said production casings are also the coal protection casings and shall not apply when the method of repairing or replacing the casing would affect the coal protection casing;*

(3) nor shall it include stimulation as a normal initial completion procedure nor stimulation used to enhance additional oil or gas zones within the same well bore.

* * *

“Owner.” Any person who owns, manages, leases, controls or possesses any well or coal property; except that for purposes of [section] *sections 203(a)(4) and (5) and 210*, the term “owner” shall not include those owners or possessors of surface real property on which the abandoned well is located who did not participate or incur costs in the drilling or extraction operation of the abandoned well and had no right of control over the drilling or extraction operation of the abandoned well.

* * *

“Well.” A bore hole drilled or being drilled for the purpose of or to be used for producing, extracting or injecting any gas, petroleum or other liquid related to oil or gas production or storage, including brine disposal, but excluding bore holes drilled to produce potable water to be used as such. *The term “well” does not include a bore hole drilled or being drilled for the purpose of or to be used for systems of monitoring, producing or extracting gas from solid waste disposal facilities, as long as the wells are subject to the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and do not penetrate a workable coal seam. The term also does not include a bore hole drilled or being drilled for the purpose of or to be used for degasifying coal seams if the following conditions are satisfied:*

(1) (A) *the bore hole is used to vent methane to the outside atmosphere from an operating coal mine; and*

(B) *the bore hole is regulated as part of the mining permit pursuant to the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, and the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act; and*

(C) *the bore hole is drilled by the operator of the operating coal mine for the purpose of increased safety; or*

(2) *the bore hole is used to vent methane to the outside atmosphere pursuant to a State or Federal funded abandoned mine reclamation project.*

“Well operator” or “operator.” [Any] *The person designated as the well operator or operator on the permit application or well registration. Where a permit or registration was not issued, the term shall mean any person who locates, drills, operates, plugs or reconditions any well with the purpose of production therefrom. In cases where a well is used in connection with the underground storage of gas, the term also means a “storage operator.”*

* * *

Section 201. Well permits.

(a) No person shall drill a well or alter any existing well, except for alterations which satisfy the requirements of subsection (j), without having first obtained a well permit pursuant to subsections (b), (c), (d) and (e). *However, no person shall be required to obtain a permit to redrill a nonproducing well, if:*

(1) *the redrilling has been evaluated and approved as part of an order from the department authorizing the cleaning out and plugging or replugging of a nonproducing well, pursuant to section 13(c) of the act of*

December 18, 1984 (P.L.1069, No.214), known as the Coal and Gas Resource Coordination Act; and

(2) the redrilling is incidental to the plugging or replugging operation and the well subsequently is plugged within 15 days of redrilling.

* * *

Section 202. Permit objections.

(a) In case any well location referred to in section 201(b) is made so that the well, when drilled, will be located on a tract whose surface is owned by a person other than the well operator, then the surface landowner affected shall be notified of the intent to drill and have right to file objections, in accordance with section 501, based on the assertion that the well location violates section 205 or that information in the application is untrue in any material respect, within 15 days of the receipt by the surface owner of the plat provided for in section 201(b). *Receipt of notice by the surface owner shall be presumed to have occurred 15 days from the date of the certified mailing when the well operator submits a copy of the certified mail receipt sent to the surface owner and an affidavit certifying that the address of the surface owner to which notice was sent is the same address that is listed in the assessment books in the county in which the property is located.* If no such objections are filed or none are raised by the department within 15 days after receipt of the plat by the surface landowner or if written approval by the surface landowner is filed with the department and no objections are raised by the department within 15 days of filing, the department shall proceed to issue or deny the permit.

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Section 215. Bonding.

(a) *(1) Except as provided in [subsection (d)] subsections (d) and (d.1) hereof, upon filing an application for a well permit and before continuing to operate any oil or gas well, the owner or operator thereof shall file with the department a bond for the well and the well site on a form to be prescribed and furnished by the department[,]. Any such bond filed with an application for a well permit shall be payable to the Commonwealth and conditioned that the operator shall faithfully perform all of the drilling, water supply replacement, restoration and plugging requirements of this act. Any such bond filed with the department for a well in existence on the effective date of this act shall be payable to the Commonwealth and conditioned that the operator shall faithfully perform all of the water supply replacement, restoration and plugging requirements of this act.* The amount of the bond required shall be in the amount of \$2,500 per well for at least two years following the effective date of this act, after which time the bond amount may be adjusted by the Environmental Quality Board every two years to reflect the projected costs to the Commonwealth of performing well plugging.

(2) In lieu of individual bonds for each well, an owner or operator may file a blanket bond, on a form prepared by the department, covering all of its wells in Pennsylvania as enumerated on the bond form. A blanket bond shall be in the amount of \$25,000 for at least two years following the

effective date of this act, after which time the bond amount may be adjusted by the Environmental Quality Board every two years to reflect the projected costs to the Commonwealth of performing well plugging.

(3) Liability under such bond shall continue until the well has been properly plugged in accordance with this act and for a period of one year after filing of the certificate of plugging with the department. Each bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth and approved by the secretary. The operator may elect to deposit cash, bank certificates of deposit, automatically renewable irrevocable bank letters of credit which may be terminated by the bank at the end of a term only upon the bank giving 90 days prior written notice to the permittee and the department or negotiable bonds of the United States Government or the Commonwealth, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority or any municipality within the Commonwealth, with the department in lieu of a corporate surety. The cash deposit, bank certificate of deposit, amount of such irrevocable letter of credit or market value of such securities shall be equal at least to the sum of the bond. The secretary shall, upon receipt of any such deposit of cash, letters of credit or negotiable bonds, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in the name of the Commonwealth, in trust, for the purpose for which such deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of such deposits. The operator making deposit shall be entitled from time to time to demand and receive from the State Treasurer, on the written order of the secretary, the whole or any portion of any collateral so deposited, upon depositing with him, in lieu thereof, other collateral of the classes herein specified having a market value at least equal to the sum of the bond, and also to demand, receive and recover the interest and income from said negotiable bonds as the same becomes due and payable. Where negotiable bonds, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the owner thereof, shall convert such negotiable bonds into such other negotiable bonds of the classes herein specified as may be designated by the owner. Where notice of intent to terminate a letter of credit is given, the department shall give the operator 30 days' written notice to replace the letter of credit with other acceptable bond guarantees as provided herein and, if the owner or operator fails to replace the letter of credit within the 30-day notification period, the department shall draw upon and convert such letter of credit into cash and hold it as a collateral bond guarantee.

(b) No bond shall be fully released until all requirements of this act *identified in subsection (a)* are fully met. Upon release of all of the bonds and collateral as herein provided, the State Treasurer shall immediately return to the owner the amount of cash or securities specified therein.

(c) If the well owner or operator fails or refuses to comply with the *applicable* requirements of this act *identified in subsection (a)*, the regulations promulgated hereunder or the conditions of the permit *relating thereto*, the

department may declare the bond forfeited and shall certify the same to the Attorney General, who shall proceed to enforce and collect the full amount of the bond and, where the owner or operator has deposited cash or securities as collateral in lieu of a corporate surety, the department shall declare said collateral forfeited and shall direct the State Treasurer to pay the full amount of said funds into the Well Plugging Restricted Revenue Account or to proceed to sell said security to the extent forfeited and pay the proceeds thereof into the Well Plugging Restricted Revenue Account. Should any corporate surety or bank fail to promptly pay, in full, a forfeited bond, it shall be disqualified from writing any further bonds under the act or any other environmental act administered by the department. Any person aggrieved by reason of forfeiting the bond or converting collateral, as herein provided, shall have a right to appeal to the Environmental Hearing Board in the manner provided by law. Upon forfeiture of a blanket bond for a violation occurring at one or more well sites, the person whose bond is forfeited shall submit a replacement bond to cover all other wells of which he is owner or operator within ten days of said forfeiture. Failure to submit said replacement bond constitutes a violation of this section as to each of the wells owned or operated by said person.

(d) Any well operator who cannot obtain a bond for a well drilled prior to the effective date of this act, as required under subsection (a), due to an inability to demonstrate sufficient financial resources shall submit to the department letters of rejection from three separate bonding companies licensed to do business in the Commonwealth. Such letters shall state that the operator has been denied a bond and state the grounds for denial of the bond. In lieu of the bond, the operator shall submit to the department a fee in the amount of \$50 per well, or a blanket fee of \$500 for ten to 20 wells, or a blanket fee of \$1,000 for more than 20 wells, which shall be a nonrefundable fee paid each year that the operator has not filed a bond with the department. The operator must demonstrate every three years a continued inability to obtain a bond as prescribed above. All fees collected in lieu of a bond under this subsection shall be paid into the Well Plugging Restricted Revenue Account and shall be used for the purposes authorized by this act. The Environmental Quality Board shall have the power, by regulation, to increase the amount of the fees established under this subsection if it is found that the total moneys collected hereunder are insufficient to reimburse the Commonwealth for costs incurred in correcting violations on wells covered under this subsection.

(d.1) (1) An individual who cannot obtain a bond to drill new wells due to an inability to demonstrate financial resources, as evidenced by letters of rejection as required under subsection (d), may meet the collateral bond requirements of subsection (a) by making phased deposits of collateral to fully collateralize the bond. Such individuals shall be limited to drilling two new wells per calendar year. The individual shall, for each well to be drilled, deposit \$500 and shall, thereafter, annually deposit 10% of the remaining bond amount for a period of ten years. Interest accumulated by the collateral shall become a part of the bond until such time as the collat-

eral, plus accumulated interest, equals the amount of the required bond. The collateral shall be deposited, in trust, with the State Treasurer as provided in subsection (a) or with a bank selected by the department which shall act as trustee for the benefit of the Commonwealth, to guarantee the individual's compliance with the drilling, water supply replacement, restoration and plugging requirements of this act. The individual shall be required to pay all costs of the trust.

(2) Individuals may continue to use phased collateral to obtain permits so long as they have not missed any payments for wells drilled under this provision and so long as they remain in compliance with this act, and regulations and permits issued thereunder. For the purposes of this subsection an "individual" is defined as an applicant who is a natural person doing business under his own name.

(e) All remedies for violation of this act, the regulations adopted hereunder or the conditions of permits are expressly preserved. Nothing in subsections (a), (b) and (c) shall be construed as an exclusive penalty or remedy for such violations of law. No action taken pursuant to subsection (c) shall waive or impair any other remedy or penalty provided in law.

Section 2. The act is amended by adding a section to read:

Section 603.1. Relationship to solid waste.

(a) The obligation to obtain a permit and post a bond pursuant to Articles III and V of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and to provide public notice pursuant to section 1905-A(b)(1)(v) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, for any pit, impoundment, method or facility employed for the disposal, processing or storage of residual wastes generated by the drilling of an oil or gas well or from the production of such wells which is located on the well site shall be satisfied if the owner or operator of the well meets the following conditions:

(1) the well is permitted pursuant to the requirements of section 201 or¹ registered pursuant to the requirements of section 203;

(2) the owner or operator satisfies the financial security requirements of section 215 by obtaining a surety or collateral bond for the well and well site; and

(3) the owner or operator maintains compliance with the act and any applicable regulations promulgated by the Environmental Quality Board.

(b) Nothing in this section shall diminish any other duties or obligations that an owner or operator may have under the Solid Waste Management Act. The provisions of this section shall not apply to any waste which is classified as a hazardous waste pursuant to the Solid Waste Management Act, or the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 et seq.).

(c) As used in this section and sections 206 and 215, the term "well site" means the areas occupied by all equipment or facilities necessary for or incidental to the drilling, production or plugging of a well.

Section 3. Section 1929-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.

Section 4. This act shall take effect in 30 days.

APPROVED—The 9th day of October, A. D. 1986.

DICK THORNBURGH