

**PRESENTED AT**

47th Annual Ernest E. Smith  
Oil, Gas and Mineral Law Institute and Fundamentals

March 25-26, 2021  
Live Webcast

## **What You (Yes, You) Need to Know to Drill and Complete an Oil or Gas Well in Texas**

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**WHAT YOU (YES, YOU) NEED TO KNOW TO DRILL AND COMPLETE  
AN OIL OR GAS WELL IN TEXAS**

**I. COMMISSION JURISDICTION AND REGULATORY FRAMEWORK**

In Texas, oil and gas in place is real property, and the landowner is the absolute owner of the oil and gas in place.<sup>1</sup> The most common avenue for developing oil and gas reserves is to lease property to an oil and gas company. A lease granting the right to develop oil and gas is a determinable fee.<sup>2</sup> When oil and gas is produced, it becomes personal property. If oil and gas moves to another tract and is produced from a well on another's land, that person has no liability to the owner of the tract under which the oil or gas originated. This is the rule of capture. Across Texas, these property concepts encouraged chaotic, unrestrained drilling in every area of the state.

In 1917, alarmed by the development frenzy, Texas amended its Constitution to include the declaration that the conservation and development of natural resources was a public right and duty, and the Legislature was authorized to adopt laws to ensure such conservation.<sup>3</sup> Very public concern about fire and threats to surface waters from the large earthen pits in which crude was then stored prompted the Texas Legislature to adopt extensive provisions relating to prevention of waste in 1919. The Texas Railroad Commission was designated as the state agency charged with regulating the oil and gas industry.<sup>4</sup> Movement of crude on railroads, the primary access to markets, was thus already within its ambit. Since movement to market was directly tied to prevention of physical waste, the Commission's existing authority over the transporters of hydrocarbons made them the logical choice to regulate oil and gas operations also.

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<sup>1</sup> *Texas Co. v. Daugherty*, 160 S.W. 129 (Tex. Civ. App.—Fort Worth 1913), 107 Tex. 226, 176 S.W. 717 (1915).

<sup>2</sup> *Stephens Cty. v. Mid-Kansas Oil & Gas Co.*, 254 S.W. 290 (Tex. 1923).

<sup>3</sup> Vernon Ann. Texas Const., Art. XVI, §59 (2000).

<sup>4</sup> Tex. Nat. Res. Code Ann. §81.051 (Vernon 2020).

Between 1917 and 1934, the Texas Legislature adopted the majority of the statutes that have governed Commission regulation of the oil and gas industry since then.<sup>5</sup> The Commission began to promulgate reservoir specific rules applicable to drilling, completing and producing oil and gas wells. These initial rules were adopted based on data from operations in early reservoirs, often requested and supported by the operators in the area. These orders were bundled together in pamphlets called circulars which were updated and expanded. In 1919, the Commission adopted its first “statewide” rule by order. This was its general well spacing rule, now known as Rule 37.

This practice of regulating based on actual development experience and fact specific information, sometimes applicable only in one area, and sometimes applicable statewide, was an extraordinary approach to the regulatory process. It is what underpins the resilience, adaptability and responsiveness of the Commission’s regulation over the past 100 years and is the key to its unique success as a regulator. There are now 105 statewide rules applicable to oil and gas operations in Texas.<sup>6</sup> There are over 40,000 pages of special field rule orders applicable to individual reservoirs.<sup>7</sup> In addition, hundreds of thousands of wells have individual well-specific compliance criteria.

The shale and horizontal well boom of the past two decades has followed this same regulatory path. Over the past 20 years, operators have specifically sought and obtained special field rules that allowed for exceptions to drilling and completion requirements for horizontal wells. Based on industry experience in what are now identified as unconventional reservoirs, the Commission has adopted modifications to statewide rules designed for vertical wells in traditional

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<sup>5</sup> *See generally* Texas Natural Resources Code, Title 3, Chapters 81 through 123, especially Chapters 81, 85 and 86.

<sup>6</sup> The Commission’s oil and gas regulations can be found in Title 16, Chapter 3 of the Texas Administrative Code. The correct citation form is 16 Tex. Admin. Code 3.\*\*, but for ease I will simply refer to them as Rule \*\*.

<sup>7</sup> Special field rules are adopted by Commission order, after a hearing and are referenced by a unique docket number. They can be found on the Commission’s website, which is <http://www.rrc.state.tx.us>.

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First appeared as part of the conference materials for the  
2021 Fundamentals of Oil, Gas and Mineral Law session

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