



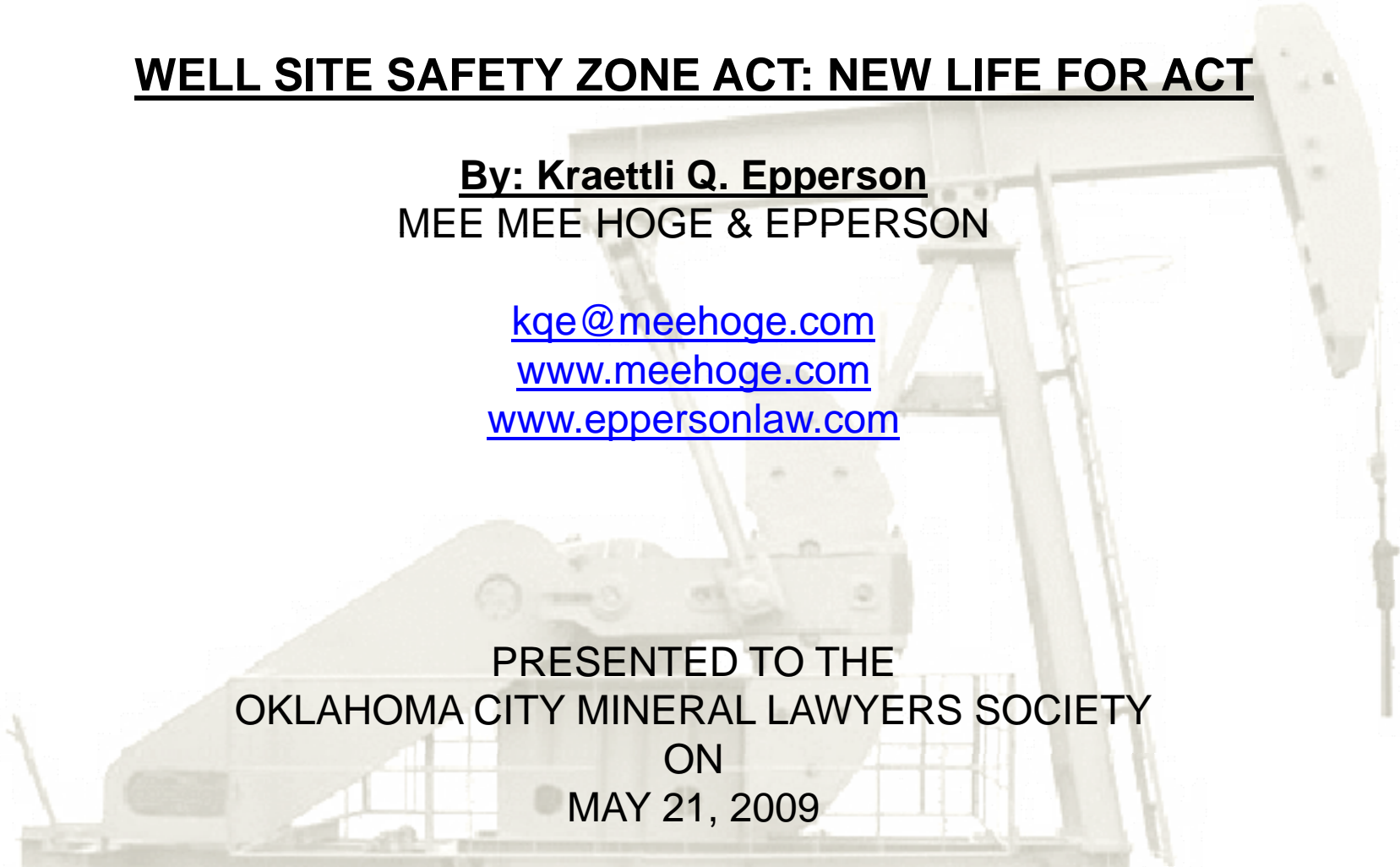
Mee Mee Hoge & Epperson, PLLP

WELL SITE SAFETY ZONE ACT: NEW LIFE FOR ACT

By: Kraettli Q. Epperson
MEE MEE HOGE & EPPERSON

kqe@meehoge.com
www.meehoge.com
www.eppersonlaw.com

PRESENTED TO THE
OKLAHOMA CITY MINERAL LAWYERS SOCIETY
ON
MAY 21, 2009





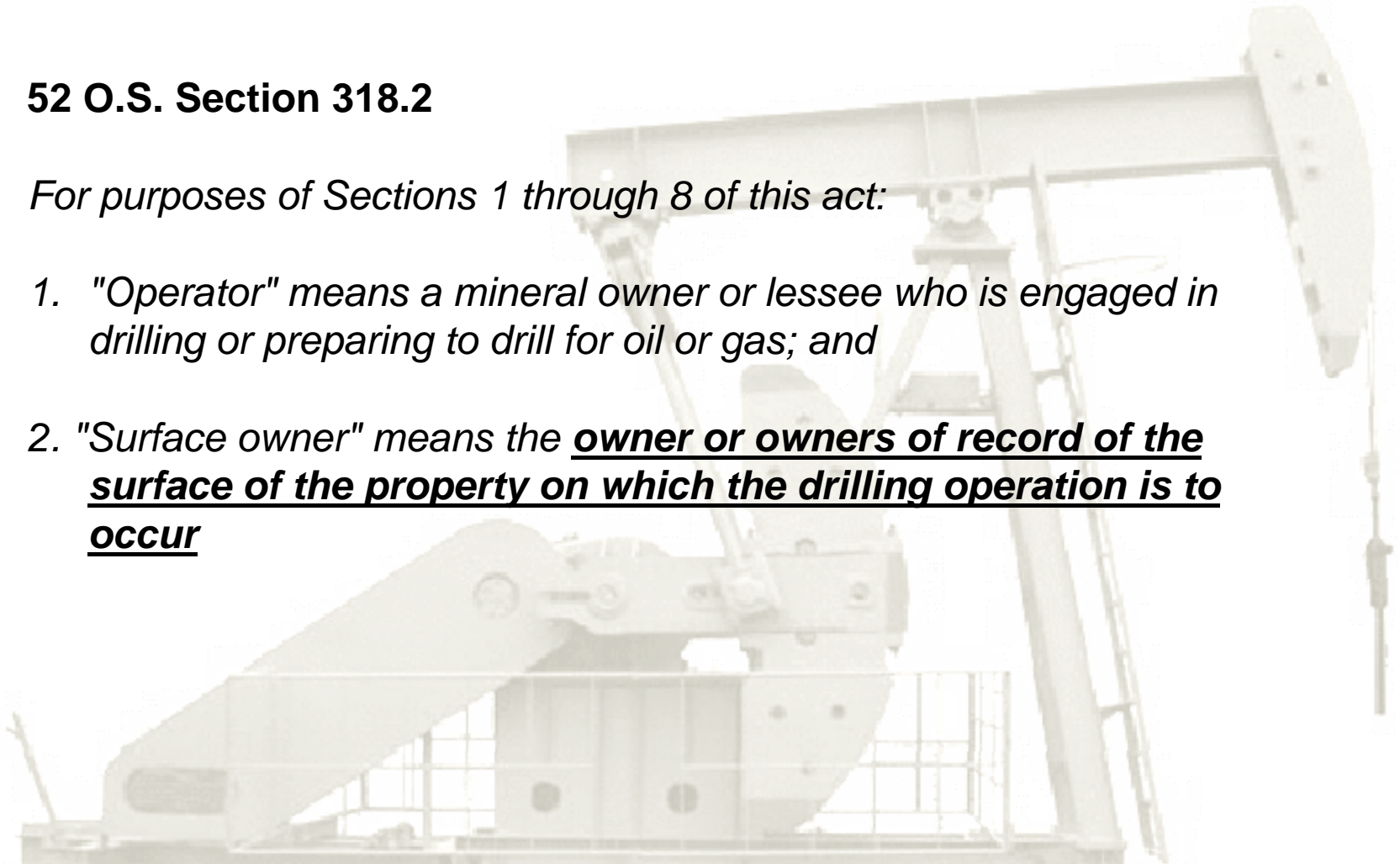
Mee Mee Hoge & Epperson, PLLP

SURFACE DAMAGES ACT (1982)

52 O.S. Section 318.2

For purposes of Sections 1 through 8 of this act:

1. "Operator" means a mineral owner or lessee who is engaged in drilling or preparing to drill for oil or gas; and
2. "Surface owner" means the **owner or owners of record of the surface of the property on which the drilling operation is to occur**



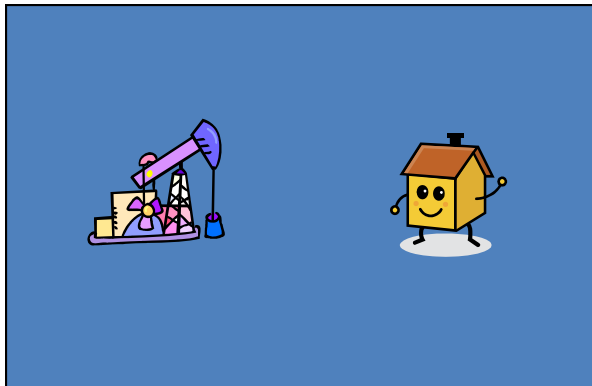


Mee Mee Hoge & Epperson, PLLP

SURFACE DAMAGES ACT (1982)

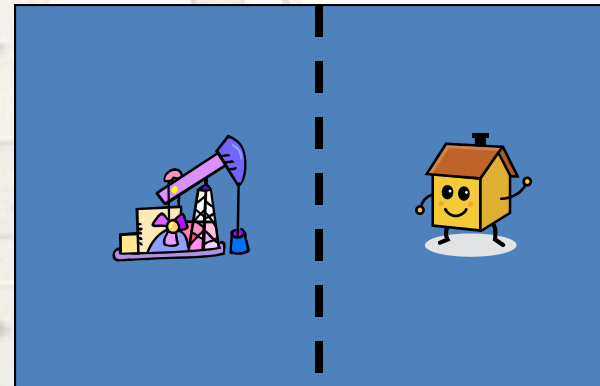
A. IF COMMON
SURFACE
OWNERSHIP

YES!



B. IF SEPARATE
SURFACE
OWNERSHIP

NO!





Mee Mee Hoge & Epperson, PLLP

WELL SITE SAFETY ZONE ACT (2003 to 2006)

52 O.S.Supp.2003 §318.10, recodified as 52 O.S.Supp.2006 §320.1, provides:

A. After the effective date of this act, **it shall be unlawful to locate any habitable structure within:**

1. A radius of one hundred twenty-five (125) feet from the wellbore of an active well; or

2. A radius of fifty (50) feet from the center of any surface equipment or other equipment necessary for the operation of an active well, including, but not limited to, hydrocarbon and brine storage vessels, tanks, compressors, heaters, separators, dehydrators, or any other related equipment.

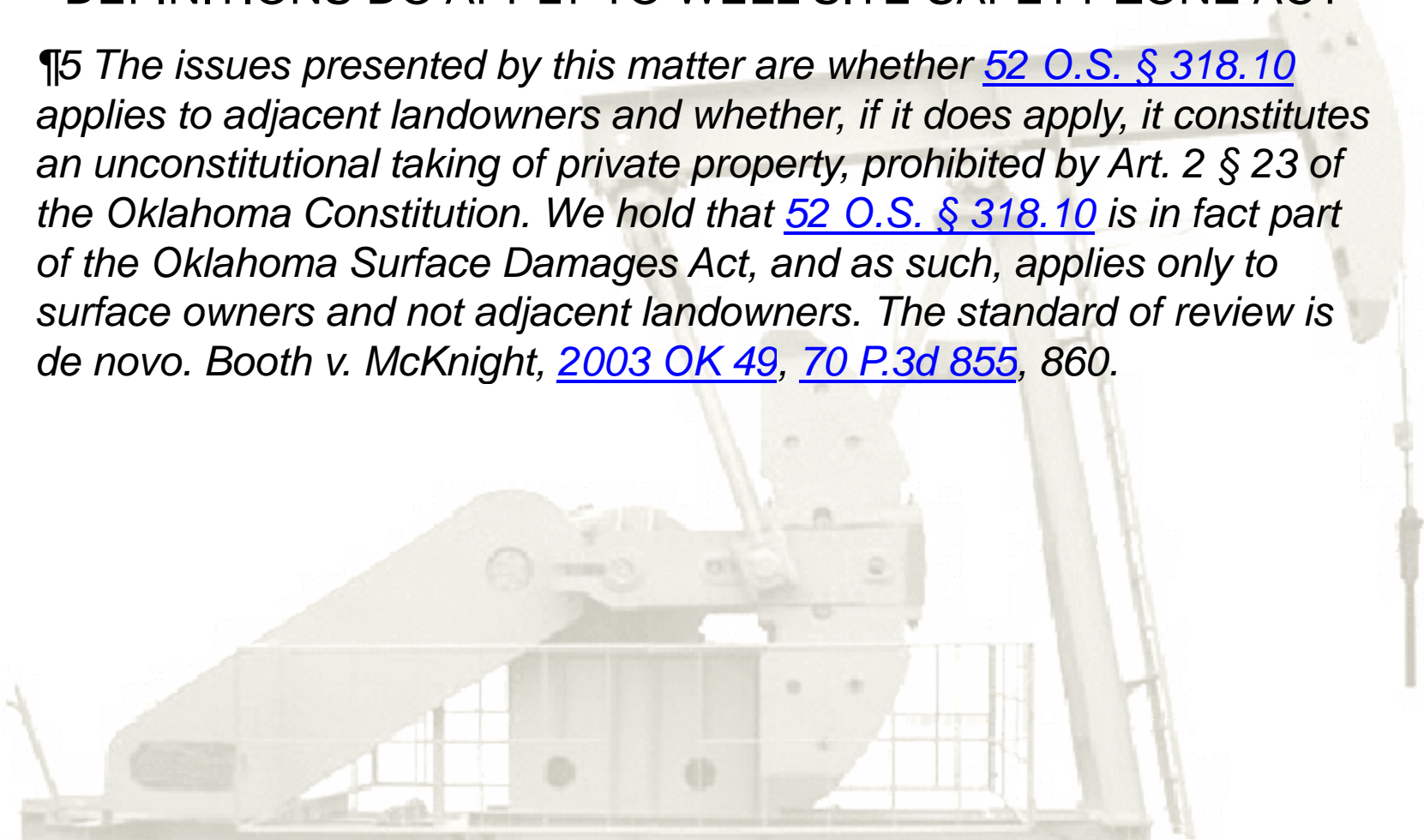
B. *Provided, however, the provisions of this section shall not prohibit an operator and surface owner from agreeing in writing to setback provisions with distances different from those set forth in this section.*



Mee Mee Hoge & Epperson, PLLP

YDF CASE, 2006 OK 32, SURFACE DAMAGES ACT DEFINITIONS DO APPLY TO WELL SITE SAFETY ZONE ACT

¶15 *The issues presented by this matter are whether [52 O.S. § 318.10](#) applies to adjacent landowners and whether, if it does apply, it constitutes an unconstitutional taking of private property, prohibited by Art. 2 § 23 of the Oklahoma Constitution. We hold that [52 O.S. § 318.10](#) is in fact part of the Oklahoma Surface Damages Act, and as such, applies only to surface owners and not adjacent landowners. The standard of review is de novo. Booth v. McKnight, [2003 OK 49](#), [70 P.3d 855](#), 860.*





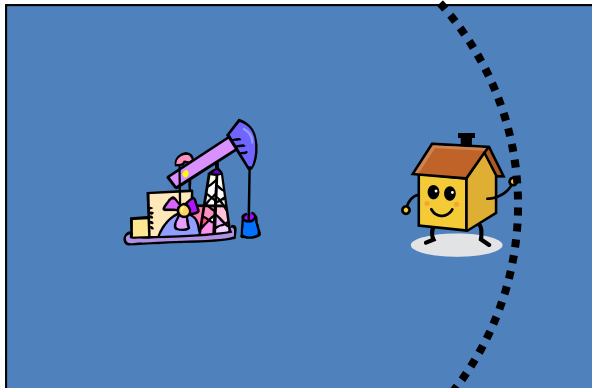
Mee Mee Hoge & Epperson, PLLP

WELL SITE SAFETY ZONE ACT (2003 to 2006)

ARE HOUSES PROHIBITED WITHIN 125 FEET OF WELL SITE?

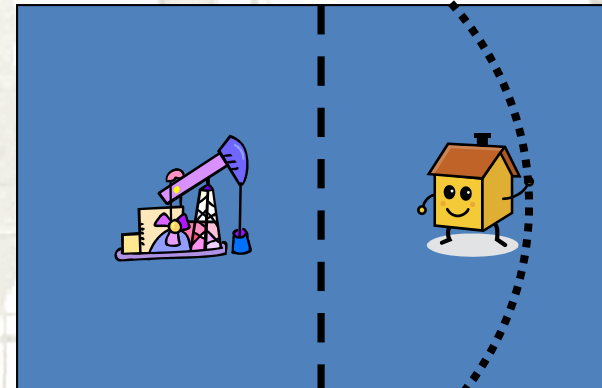
A. IF COMMON
SURFACE
OWNERSHIP

YES!



B. IF SEPARATE
SURFACE
OWNERSHIP

NO!





Mee Mee Hoge & Epperson, PLLP

WELL SITE SAFETY ZONE (2006 RECODIFICATION) TEXT:

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1 . RECODIFICATION Section 1, Chapter 361, O.S.L. 2003 (52 O.S. Supp. 2005, Section 318.10), shall be recodified as Section 320.1 of Title 52 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 2 . It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 24th day of May, 2006 .

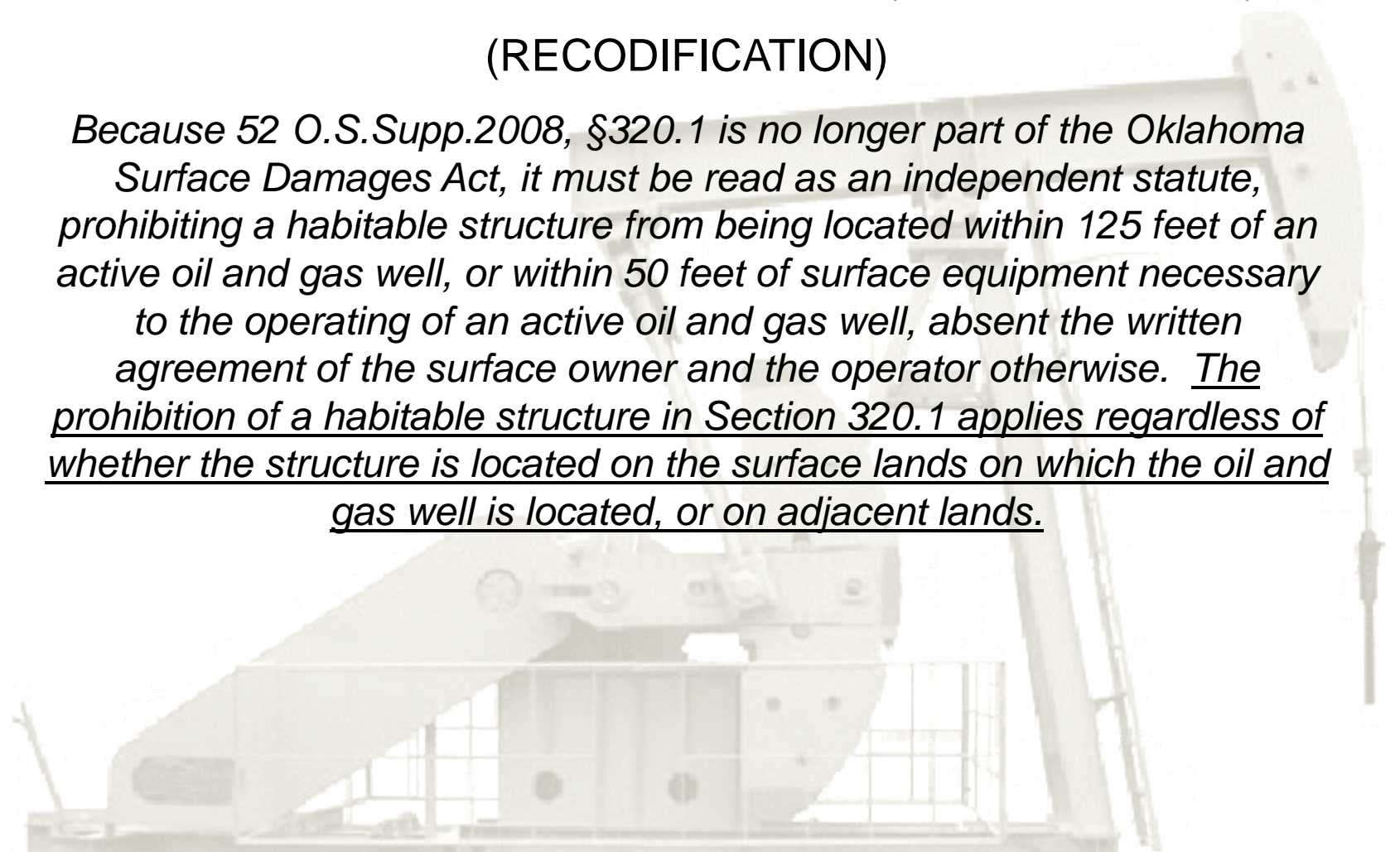


Mee Mee Hoge & Epperson, PLLP

ATTORNEY GENERAL OPINION 09-5 (MARCH 26, 2009)

(RECODIFICATION)

Because 52 O.S.Supp.2008, §320.1 is no longer part of the Oklahoma Surface Damages Act, it must be read as an independent statute, prohibiting a habitable structure from being located within 125 feet of an active oil and gas well, or within 50 feet of surface equipment necessary to the operating of an active oil and gas well, absent the written agreement of the surface owner and the operator otherwise. The prohibition of a habitable structure in Section 320.1 applies regardless of whether the structure is located on the surface lands on which the oil and gas well is located, or on adjacent lands.

A faded, light-colored background image of an oil pumpjack (jack-o'-lantern) is visible behind the text. The pumpjack is a large mechanical structure used for extracting oil from a well, consisting of a long walking beam pivoted to a vertical rod connected to the wellhead.



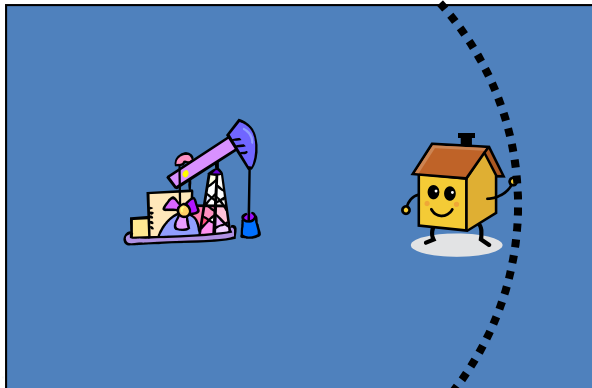
Mee Mee Hoge & Epperson, PLLP

WELL SITE SAFETY ZONE ACT (2006 to Present)

ARE HOUSES PROHIBITED WITHIN 125 FEET OF WELL SITE?

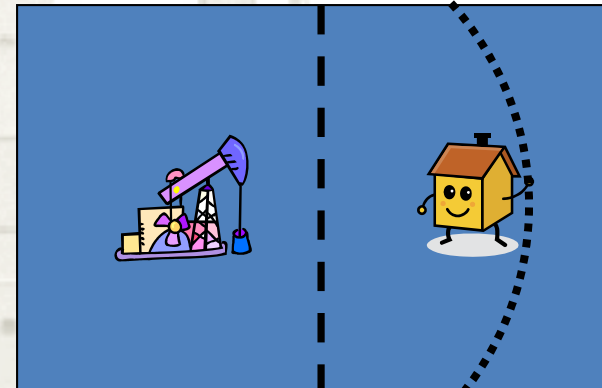
A. IF COMMON
SURFACE
OWNERSHIP

YES!



B. IF SEPARATE
SURFACE
OWNERSHIP

YES!





Mee Mee Hoge & Epperson, PLLP

ATTORNEY GENERAL OPINION'S WEIGHT

In analyzing the weight to be given to an AG's Opinion, the opinions are "persuasive authority", making them the equivalent of an opinion of the Court of Civil Appeals.

An AG's opinion is binding upon the state officials whom it affects. Public officers have the duty to follow those opinions until they are judicially relieved of compliance.

It is the duty of local public officers, including county officers, to follow and not disregard, the advice of the AG.

Hereafter, any and all state bodies, for example the Corporation Commission, and any and all counties and cities, including those approving subdivision plats and zoning applications and issuing residential building and occupancy permits, are on notice that they must abide by this pronouncement.



Mee Mee Hoge & Epperson, PLLP

UNANSWERED QUESTIONS

Other unanswered questions also remain, such as:

- what to do about violations arising between 2006 and the present, and
- who bears the liability for financial loss for the homeowner's diminution in value upon resale, or for the costs for relocation of the home or well.

