

**STATE OF NEW MEXICO
ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF PROPOSED AMENDMENTS TO THE
COMMISSION'S RULES ON FINANCIAL ASSURANCE AND
PLUGGING AND ABANDONMENT OF WELLS,
19.15.2, 19.15.8 AND 19.15.25 NMAC; STATEWIDE**

**CASE NO. 16078
ORDER NO. R-14834**

ORDER OF THE COMMISSION

THIS MATTER came before the New Mexico Oil Conservation Commission ("Commission") on the application of the Oil Conservation Division of the Energy, Minerals and Natural Resources Department ("OCD") to amend Rules 19.15.2, 19.15.8 and 19.15.25 NMAC. The Commission, having conducted a hearing on July 19 and 20, 2018 and deliberated in open session following the hearing, and having considered the testimony, the record, and the arguments of the parties, and being otherwise fully advised, enters the following findings, conclusions, and order.

THE COMMISSION FINDS THAT:

1. Statutory Authority. The Commission is authorized to adopt rules, after a hearing, under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -38 (1935, as amended through 2018) ("Act"). NMSA 1978, § 70-2-12.2 (2015). The Commission and OCD are given the duty to prevent waste and protect correlative rights and to make and enforce rules to carry out the purpose of the Act, NMSA 1978, § 70-2-11, and are specifically authorized to make rules to require abandoned wells to be plugged and to require financial assurance for the performance of such rules. NMSA 1978, § 70-2-12(B)(1). The Act also specifies the requirements for types and amounts of acceptable financial assurance and requires the adoption of rules to establish amounts. NMSA 1978, § 70-2-14 (2018). In 2018, the Legislature amended Section 70-2-14 to increase the cap for a blanket financial assurance and required that the amounts for a blanket plugging financial assurance be set by rule. Laws 2018, ch. 16.

2. Application and Notice. OCD filed an Application on March 28, 2018, to amend 19.15.2, 19.15.8 and 19.15.25 NMAC, which rules relate to financial assurance and plugging and abandonment of wells ("proposed rule change"). The Application included a draft of the proposed rule change and a proposed legal notice. 19.15.3.8(A) NMAC.

3. At a public meeting on April 12, 2018, the Commission determined to hold a hearing on the proposed rule change and scheduled the hearing to begin on May 24, 2018. 19.15.3.8(C) NMAC. The Commission continued the hearing to July 19, 2018.

4. Notice of the rulemaking and of the date, time, and place of the hearing was provided as required by NMSA 1978, § 14-4-5.2 (2017) and 19.15.3.9 NMAC, including publication in the New Mexico Register on April 24, 2018. (OCD exh. 2).

5. Pre-hearing statements were submitted by OCD and the Independent Petroleum Association of New Mexico ("IPANM"). OCD proposed technical witnesses for the hearing; IPANM did not propose any technical witnesses. In its pre-hearing statement, IPANM offered modifications to the proposed rule changes. The OCC did not receive any written submittals, other than those submitted in the hearing process.

6. Proposed Rule Change. The applicant, OCD, proposed to amend rules 19.15.2, 19.15.8 and 19.15.25 NMAC. The proposed rule change adds the following provisions:

(a) Blanket Financial Assurance: To implement the higher cap enacted by the Legislature, OCD proposed a ladder of blanket bond amounts with steps at \$50,000, \$75,000, \$125,000 and \$250,000 depending on the total number of wells operated by the company on the bond. The amounts of blanket plugging financial assurance for wells in temporarily abandoned status are not changed.

(b) Single Well Financial Assurance: OCD proposed to increase the financial assurance amount for a single well. The current formula of \$5000 or \$10,000 per well plus \$1 per foot is increased to \$25,000 per well and \$2 per foot. The current system of two formulas based on the location within the state is replaced by a single formula. In 19.15.2, OCD proposes to add definitions for the terms "measured depth" and "true vertical depth", which terms are employed in the formulas.

(c) Approved Temporary Abandonment: OCD proposes to amend 19.15.25 to limit the percentage of wells that an operator can place in approved temporary abandonment. An operator will not be permitted to place more than one-third of all its wells in approved temporary abandonment. The proposal also requires that an operator must comply with the financial assurance requirements for temporarily abandoned wells under 19.15.8 NMAC before the well can receive a permit for approved temporary abandonment.

(d) Transition Provision: OCD proposes that the new financial assurance requirements will apply immediately to all permit applications to drill, deepen or plug back a well or for approved temporary abandonment. For all other wells, the effective date of the new requirements is delayed approximately 3 months.

7. Public hearing. The Commission commenced a public hearing on the proposed rule changes that began on July 19, 2018 and continued until July 20, 2018. The Commission completed deliberations on July 20, 2018.

8. OCD presented Allison Marks and Philip Goetze as technical witnesses. No other technical witnesses were presented by the parties. Each technical witness was subject to cross-examination by the other parties and by the Commissioners and Commission Counsel.

9. Allison Marks explained the purposes of the proposed rule change. The primary purpose is to implement changes to the Act enacted in 2018, to amend financial assurance requirements to reflect the goals of the Act and to prevent the overuse of approved temporary abandonment. The Act was amended in 2018 to increase the cap on blanket financial assurance for active wells from \$50,000 to \$250,000. Laws 2018, ch. 16. The amendments to the Act require that the amounts be set by rule. Laws 2018, ch. 16, §2. The proposed rule change also amends the formula for a one well financial assurance to meet the requirement in the Act that a one well plugging financial assurance be “in amounts determined sufficient to reasonably pay the costs of plugging the wells.” NMSA 1978, §70-2-14(A). Finally, the proposed amendments to the temporary abandonment rules are designed to limit the percentage of wells that an operator can place in approved temporary abandonment and to link the approval with the requirements for financial assurance. (Marks testimony).

10. Allison Marks went through each of the provisions to explain the changes. The proposal to implement the Legislative change to blanket plugging financial assurance provides for a tiered approach with blanket bonds at \$50,000 for operators with one to ten wells, \$75,000 for operators with eleven to fifty wells, \$125,000 for operators with fifty-one to one hundred wells and \$250,000 for operators with more than one hundred wells. The tiered approach follows what the Commission had adopted in 2015 for blanket plugging financial assurance for temporarily abandoned status wells. 19.15.8.9(D) NMAC. The proposal increases the amount of financial assurance available to the State if an operator fails to comply with the requirements to plug and abandon their wells. (Marks testimony).

11. The proposal to increase the amount of the one well financial assurance is based on data from the last 4 years of actual plugging costs incurred by OCD. (OCD exh. 6). The current formula in the rule does not accurately reflect the actual costs. OCD provided data and charts demonstrating how the proposed formula (\$25,000 plus two dollars per foot of the depth of the well) fit the actual costs of plugging wells at various depths. OCD also proposed to eliminate the use of two different formulas for different areas of the State. (Marks testimony; OCD exh. 3-5, 9, 10).

12. The proposal adds new definitions of “measured depth” and “true vertical depth” that are used in the calculation of the one well financial assurance amount. Given the variation in the types of wells now employed by operators, different calculations of depth are used for vertical and horizontal wells (true vertical depth) and for deviated and directional wells (measured depth). OCD explained the methods and the reasoning for using each in different situations. (Goetze testimony; OCD exh. 8). In response to questions from the Commission, OCD offered a slightly revised definition of “true vertical depth”. (OCD exh. 12).

13. The OCD proposal amends 19.15.25 (“Plugging and Abandonment of Wells”) to (a) limit the percentage of wells that an operator can place into approved temporary abandonment status and (b) link the approval of temporary abandonment with the change in financial assurance required by the Act and Rules. Under the Rules, OCD can permit a well to be in approved temporary abandonment if the well has been inactive for fifteen months and the well meets certain requirements. This status allows the well to

remain inactive without being permanently plugged. OCD presented evidence on operators that are currently out of compliance with the inactive well rules and the risks those operators pose. (Marks testimony; OCD exh. 7). Operators with a high percentage of inactive wells pose the greatest threats. The OCD proposal would limit the number the number of wells that could receive approved temporary abandonment to one-third of the total number of wells. OCD provided amended language for this proposal. (OCD exh. 12)

14. OCD proposed to add a financial assurance requirement to the standards for approved temporary abandonment. 19.15.25.13(F) NMAC. The Act requires operators to have increased financial assurance for wells in “temporary abandonment status”. NMSA 1978, §70-2-14(A). This proposal is intended to simplify the process for both operators and the agency by having the operator provide the new financial assurance at the same time they would apply for approved temporary abandonment. (Marks testimony).

15. IPANM participated in the hearing through the submittal of amendments to the proposed rule change and through cross examination of witnesses. IPANM proposed to lower the tiers for blanket financial assurance by beginning at \$25,000. In cross-examination, IPANM raised several concerns with the proposed rule change including whether it is fair to include the numbers of federal wells in the calculating the tier levels. The financial assurance requirements only cover wells on state and private land. 19.15.8.9(A) NMAC. Federal wells have separate financial assurance through the federal government.

16. Public comment was provided at the hearing by Larry Marker and Rory McMinn. Mr. Marker also offered written comments, which included proposed changes to the proposal. Mr. Marker and Mr. McMinn both testified as operators of low volume wells, sometimes referred to as “stripper wells”. Both testified on the costs to comply with financial assurance requirements, and that the OCD proposal would increase those costs. Both supported the IPANM proposal for blanket plugging financial assurance. Mr. Marker also proposed changes to the one well financial assurance formulas; Mr. McMinn supported Mr. Marker’s changes.

17. Changes to Published Rule. During the rulemaking proceeding, modifications to the proposed rule were offered. IPANM proposed modifications in its pre-hearing submittal. Larry Marker submitted written modifications at the hearing that were untimely under Commission rules, 19.15.3.11.B NMAC, but no party objected and the Commission considered the proposals during deliberations. In response to requests and questions from the Commissioners, additional changes were submitted by OCD at the hearing prior to deliberation by the Commission (OCD exh. 11, 12, 15).

18. Deliberations and Actions. The Commission commenced deliberation on July 19. During deliberation, the Commission reviewed the proposed rule changes, the modifications submitted by other parties, the further modifications submitted by OCD, and the evidence presented during the hearing. The Commission reviewed each section of the proposed rule and made some changes to the proposal. The Commission directed Commission counsel to prepare a clean version of the proposed rule changes based on the deliberation, and a draft Order. On August 20, 2018, the Commission reviewed the final draft of the proposed rule changes, completed deliberations and adopted this Order. The

Commission adopted the attached rule changes which consist of the proposed rule changes with modifications.

19. Reasons for Adopting the Rule Changes. The Commission finds that the 2018 amendments to the Act require changes to the Commission's financial assurance rules. The proposed rule changes are a reasonable implementation of the statutory changes and are supported by substantial evidence. The changes are necessary to bring the rules into compliance with the statutory mandates, which require financial assurance to assure that operators meet the requirements to properly plug and abandon wells. The Commission finds that the proposed rule change, as modified, increases the requirements for financial assurance, as required by the Act, without unnecessarily burdening small operators. The proposed rule change provides a clear and detailed process for when and how to provide financial assurance, and brings greater consistency to the rules.

20. Blanket plugging financial assurance. The Commission finds that the proposal from OCD, as amended, is a reasonable implementation of the Legislative change to the Act. The Commission reviewed the impacts of the OCD and IPANM proposals, and the impacts with and without including federal wells in the totals. (OCD exh. 9, 13, 14). The Commission finds that the proposed rule changes provide for the statutory increase in blanket financial assurance without unreasonably burdening small operators. Under the OCD proposal, over 50% of the operators would not be subject to a blanket bond greater than is currently required. By not unreasonably burdening small operators who could be forced to plug low volume wells, the proposal avoids potential waste. NMSA 1978, §§ 70-2-3, 70-2-6, and 70-2-11. The Commission finds that the IPANM proposal, which would allow over 50% of the operators to be eligible for reduced blanket financial assurance and increase the amount for less than 12% of the operators, is not consistent with the intent of the legislation which authorized a 400% increase in the maximum blanket financial assurance.

21. The Commission finds that the IPANM concern about potential double bonding when the number of wells covered by the state blanket bond includes federal wells which are covered by separate financial assurance is valid. The Commission modified the proposed rule change to provide that if the number of federal wells held by an operator causes the operator to move into a higher tier under 19.15.8.9(C)(2) NMAC, then the state blanket bond can be reduced by the amount of the federal statewide blanket bond. 10.15.8.9(C)(3) NMAC.

22. One Well Financial Assurance. The Commission finds that the new formula for one well financial assurance more accurately reflects the actual costs of plugging wells at various depths. The evidence clearly shows that the current formulas for one well financial assurance do not accurately reflect the actual costs, and that it is not necessary to prescribe different formulas for different areas of the State. The new formula will bring the rule into compliance with the statutory mandate that the one well financial assurance must be in "amounts determined sufficient to reasonably pay the costs of plugging the wells". NMSA 1978, §70-2-14(A). The Commission finds that the formulas offered by Mr. Marker do not reflect the actual costs nearly as well as the OCD proposal. The Commission also finds that the new definitions of "measured depth" and "true vertical depth", as amended, are reasonable and necessary to implement the one well financial assurance.

23. Temporary Abandonment. The Commission finds that the OCD proposal to limit the percentage of approved temporary abandonment wells reasonable. Wells that are inactive for a significant period pose threats to the environment and fresh water. Operators with large percentages of inactive wells present an increased risk of improperly abandoning the wells and leaving the plugging and cleanup costs to the State. The Commission also finds that coordinating the requirements to permit temporary abandoned wells and to provide increased financial assurance is reasonable and will simplify the process for both the operators and the agency.

24. Transition provisions. The Commission finds that the proposal to have the new financial assurance requirements be effective immediately for new applications but be delayed for other wells is reasonable. The Commission modified the dates to comply with the actual effective date of the rule change.

25. The Commission finds that the proposed rule changes, as modified by the Commission, are supported by substantial evidence in the record. The Commission reviewed the amendments to the proposed rule changes submitted by the parties. The changes approved by the Commission are within the scope of the rulemaking as provided in the notice.

THE COMMISSION CONCLUDES THAT:

1. The Commission has jurisdiction, under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -38, over the parties and subject matter of this case.

2. The Commission has legal authority, under the Oil and Gas Act, to enact the proposed rule changes.

3. The Commission provided due public notice and an opportunity for the public to provide comments regarding the proposed rule change. A public hearing was held and reasonable opportunity was provided for all persons present to provide testimony, evidence and exhibits.

4. All Commissioners were present at the public hearing and considered all the evidence presented during the hearing including the proposed modifications submitted by the parties. The Commission deliberated after the hearing and adopted the rule changes.

5. The amendments to the proposed rule changes adopted by the Commission were a logical outgrowth of the original proposal.

6. The Commission concludes that there is substantial evidence in the record to support the proposed rule changes, as amended by the Commission, that these rule changes are within the authority of the Commission under the Oil and Gas Act and that these rule changes are reasonable and further the goals of the Oil and Gas Act.

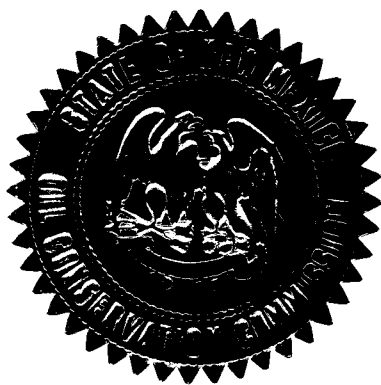
IT IS THEREFORE ORDERED THAT:

1. The proposed changes to 19.15.2, 19.15.8 and 19.15.25 NMAC, as submitted to the Commission by the OCD and as amended by the Commission during

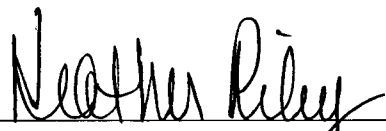
deliberation, are hereby approved by the Commission. The adoption of the rule changes will be final upon the later of (a) the action, or deemed action, of the Commission on a rehearing application filed pursuant to NMSA 1978, § 70-2-25, or (b) 20 days from the date of this order if no rehearing application is filed. The rule change shall not be filed with the state records administrator until the rule change is adopted and then must be filed within 15 days after the adoption. If no rehearing is required by the Commission, this Order shall serve as the “concise explanatory statement” required by NMSA 1978, § 14-4-5.5 (2017).

2. Commission counsel shall review the text of the final rule and make any necessary non-substantive corrections prior to filing.

DONE at Santa Fe, New Mexico, on August 20, 2018.



**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**


HEATHER RILEY, Chair


ROBERT BALCH, Member


ED MARTIN, Member

SEAL