

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER OF PROPOSED
AMENDMENTS TO THE COMMISSIONS
RULES ON FINANCIAL ASSURANCE
PLUGGING AND ABANDONMENT OF
WELLS 19.15.8.9 NMAC

Subsection C part 1 and 2

Subsection D part 1

Case No. 16078

SUBMISSION OF COMMENTS

Larry Marker et al

In reference to the proposed amendments to the commission's rules of financial assurance. I am submitting these comments and requests verbally and written to provide for clarity and reference.

#1- Proposed Amendment to rule 19.15.8.9 subsection C part 1

The O.C.D. has proposed a single well financial assurance of active wells of \$25,000 plus an additional \$2 dollars per foot of depth.

We request the commission consider the amendment to require a single active well financial assurance of \$5,000 plus an additional \$2 dollars per foot.

A-To require single active well assurance as proposed by the O.C.D. will for all practical purposes end the entry of new operators into the industry. The value of the entry level position in any industry is vital to the future of that industry.

B- New Mexico operators commonly will have wells on both federal and state land. This level of assurance proposed by the O.C.D. would be prohibitive in the event that an operator has several federal wells and one or two state wells.

#2- Proposed Amendment to rule 19.15.8.9 subsection C part 2

We endorse the proposal presented by Counsel for the I.P.A.N.M for the amended ratios as referenced in the following excerpt from the Pre-Hearing statement submitted.

- (a)\$25,000 for one to ten wells
- (b)\$50,000 for 11 to 99 wells
- (c)\$100,000 for 100 to 149 wells
- (d)\$200,000 for 150 to 199 wells
- (e)\$250,000 for 200 or more wells

A-The ratios of assurance as proposed by the I.A.P.N.M. will serve to satisfy the implementation of the changes enacted by the 2018 Legislature

#3 The Oil Conservation Division proposed ratios of assurance as they have submitted in their pre-hearing statement would be detrimental to every aspect of the oil and gas industry in New Mexico.

A-The independent operators small ,medium and large have had three of the toughest years in the history of the industry and will be forced to commit already limited resources required for operations to comply with the massive increases in financial assurance as proposed by the O.C.D.

B-Several methods of acquiring financial assurance are available. Each of these methods will require a substantial increase in operator investment under the O.C.D. proposal.

EXAMPLE

I have on record 77 State wells

My existing blanket bond is \$50,000

I am fortunate to have surety company participation.

My conditions to have this bond is 40% collateral and a 3% yearly premium

My cost is \$20,000 cash held by the surety company and a \$1,500 yearly premium charge.

The O.C.D. proposal would require I increase my blanket bond to \$125,000
I would then have \$50,000 cash held by the surety company (\$30,000 increase)
And have a yearly premium of \$3,750(\$2,250 increase)

This is assuming that the surety company after reviewing my financials will be willing to accept the increased risk at the 40% collateral or increase that as well.

The surety company could also refuse an increased level of liability at any level of collateral.

C- State Statute allows for the use of an irrevocable letter of credit as financial assurance. This option is common, Lending institutions require cash or property to be encumbered as collateral. The encumbrance of assets along with the reduction in the amount of credit now available to the operator further restricts his operations.

D-Cash is another form of assurance used to provide assurance. To increase the level of cash required to meet the O.C.D. proposed ratios would be a challenge even for the most financially secure operators.

E-Sale of assets to provide the additional resources would normally be an option. The dramatic increases of assurance proposed by the O.C.D. has already seriously reduced the value of producing properties, full implementation if adopted will further reduce the marketability of an operators property.

F-The phenomenon of increasing regulation expense on operators can easily be examined in our own industry. The increased regulatory activity to include the latest round of "Bond Reviews" by Federal agencies has depreciated the value of stripper wells on federal land to the point of making them non-marketable. Even the most aggressive buyers are not interested in stripper wells on federal land.

G- The proposed O.C.D. amendment could conceivably result in financially destroying many small, medium and even some larger operators by forcing them to divert cash or other resources to the most non-productive part of their business. The reduced value of properties and the reduction of available credit from already wary lenders is an additional negative result.

H- The proposed O.C.D. amendment will most likely result in an increase of the number of properties abandoned also reducing the O.C.D.s ability to market any of its already full portfolio of abandoned properties.

4-The O.C.D. proposed amendment to Rule 19.15.8.9 subsection D part 1. Has proposed single well financial assurance in the amount of \$25000 plus \$2 dollars per foot of depth. For wells categorized as temporarily abandoned (T.A.)

A-We respectfully request that the Commission consider the alternative of a financial assurance requirement of \$5000 plus \$4 dollars per foot of depth.

B- The level of assurance we are requesting will more accurately reflect a practical level of assurance for the shallow wells abundant in southeastern New Mexico. The requested \$5000 plus \$4 per foot will also provide the amount of assurance necessary for deeper wells.

C- The more shallow wells are attractive to entry level operators as well as small operators expanding their business. These wells also serve as a type of apprentice or incubation program for new operators. Shallow wells are traditionally less expensive to operate and have provided a foundation for some of the most successful operators in this region.

D-The level of assurance as proposed by the O.C.D. will be prohibitive to any operator attempting to purchase inactive wells with the intention of re-working them to bring them back into production. Further limiting potential.

#5- The evidence and exhibits provided by the O.C.D. in the Pre-Hearing statement is informative and thorough. That material does not demonstrate that by implementing the ratios of assurance or the increasing the amount of assurance for the single well bonds as proposed by the O.C.D. will serve to produce any positive results. As a matter of practicality the O.C.D. amendment as proposed will further expose the O.C.D and the tax payers to even more liability and less income from the affected properties and operators. The obvious detrimental conditions created

by the massive increases of financial assurance make the O.C.D. proposed amendments, counterproductive.

#6 the evidence and exhibits provided by the O.C.D. do expose facts that will not be remedied by raising the level of financial assurance.

A-Exhibit 6 "list of wells plugged" provides a list of wells plugged by the O.C.D. over the last few years. I can find no information that these wells were plugged using funds obtained from forfeited financial assurance provided by the operators. To properly demonstrate that a simple increase of financial assurance will benefit. We must be examine where the funds to plug these wells originated.

B-Without all of the information required I am left to speculate that most if not all of the 145 abandoned wells were plugged using funds procured from the Oil and Gas Reclamation Act or litigation. Neither of which would be avoided by increasing the amount of financial assurance provided by reputable operators.

C-My research did allow me to conclude that over 80% of the wells listed in exhibit 6 were operated by out of state operators.

D-Further research reveals that of the 10 operators associated with these wells 2 individual operators accounted for 100 of the wells both were out of state operators.

#7 Exhibit 7 "Rule 5.9 compliance list". Provides a list of wells in the category of inactive. Most of the wells listed are on the list because of reporting issues, waiting on repairs etc.

A-I believe the O.C.D. provided this "compliance list" to demonstrate the large amount of inactive wells and potential liability to the tax payer. This list does serve that purpose. Additionally this list also provides more evidence that the majority of the wells that will eventually be plugged by the O.C.D. will not be plugged using forfeited financial assurance funds. These wells when plugged will be plugged with money procured from the Oil and Gas Reclamation fund. Again the largest share of this future liability comes from out of state operators.

B- The "compliance list" contains a list of wells owned by 136 individual operators or companies. These operators and companies have a total of 10351 wells with

1738 of these wells listed as inactive. Further investigation into this has led me to the conclusion the number of inactive wells on State or private leases is actually 949. Most of these wells are classified as inactive because of late production reports, waiting on work over equipment etc. these wells are normally inactive for a short period of time.

C-The O.C.D, requires financial assurance from the operator on wells that are on state or private leases. Of the 1738 wells categorized as inactive only 949 of those wells require O.C.D. administered bonds of any type.

D- I do note that the O.C.D. did plug 9 wells shown as federal. These federal wells by statute could be plugged using money procured from the Oil and Gas reclamation fund. This money is not relating to financial assurance provided by the operator.

E-The increase in financial assurance will not reduce the number of existing wells already abandoned by defunct operators.

F-The B.L.M. requires its own financial assurance for wells on federal property.

#8 These comments of conclusion are based our perception of the issues of financial assurance based on my own experiences in this industry, the information I researched for this hearing and input from at least a dozen experienced independent operators.

A- The increase of financial assurance will not be a benefit to the operators, the O.C.D or the tax payers. The only people that will benefit from the increase in financial assurance is the people that provide that assurance. There is no evidence provided to prove that a massive increase in financial assurance will improve this situation.

B-The increase in financial assurance will not increase the amount of funds available to the O.C.D. to plug wells. The only practical method available is to increase the funds available via the oil and gas reclamation fund.

C- The natural course of business is that some operators will go broke. Also no amount of financial assurance will completely protect us from people with

nefarious intentions. Considering current bankruptcy laws and cost of litigation we need to adjust our policies.

D- We would be willing to support the O.C.D.in modifications required to better use the Oil and Gas reclamation fund.

TO SUMMARIZE Myself the members of the I.P.P.C. and non-member independent operators consulted respectfully request the O.C.C consider the facts of the case and implement the amendments as we have requested

Respectfully submitted

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