

**STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION**

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO  
AMEND TITLE 19, CHAPTER 15, PART 8 OF THE NEW MEXICO  
ADMINISTRATIVE CODE (“FINANCIAL ASSURANCE”)**

CASE NO. 15314

**APPLICATION FOR RULEMAKING**

The New Mexico Oil Conservation Division (“OCD”), by and through undersigned counsel, applies to the New Mexico Oil Conservation Commission (“OCC”) for an order to amend Title 19, Chapter 15, Part 8 of the New Mexico Administrative Code (“Financial Assurance Rule”) addressing financial assurance requirements. The proposed rule amendments are intended to incorporate changes required by the New Mexico Legislature in House Bill 383 and Senate Bill 442, said legislation having been signed into law on April 8, 2015, by Governor Martinez, with said legislation containing an emergency clause thereby making the legislation effective immediately. In addition to the legislatively mandated changes to the Oil and Gas Act, the OCD seeks additional change to the Financial Assurance Rule. The proposed rule amendments include:

1. Establish amounts of blanket plugging financial assurance for wells in temporarily abandoned status;
2. Clarify and codify that, if a blanket bond no longer covers certain wells, additional financial assurance for the non-covered wells is required;
3. Codify requirements for operators who elect to maintain financial assurance through a plugging insurance policy;
4. Codify the requirement to notify the Division of any bankruptcy proceeding as required under rules of the United States bankruptcy court;
5. Require operators to update financial assurance documents when certain changes occur to existing financial assurance documents on file with the Division; and
6. Otherwise amend rule 19.15.8 NMAC to protect water, public health and the environment, prevent waste of oil and gas, and to protect correlative rights.

A copy of the proposed amended Financial Assurance Rule is attached hereto as Exhibit A and made a part hereof. A copy of the legal notice for publication is attached hereto as Exhibit B and made a part hereof.

WHEREFORE, the OCD respectfully requests that the OCC hold a hearing and following said hearing, enter and order adopting a rule change to the Financial Assurance Rule.

RECEIVED OCD  
MAY - 1 A 10: 20

Respectfully submitted  
this 1st day of May, 2015 by

A handwritten signature in black ink, appearing to read 'Allison R. Marks', written over a horizontal line.

Allison R. Marks  
Oil Conservation Division  
Energy, Minerals and Natural  
Resources Department  
1220 S. St. Francis Drive  
Santa Fe, NM 87505  
(505) 476-3206  
Fax (505) 476-3462  
Email: [AllisonR.Marks@state.nm.us](mailto:AllisonR.Marks@state.nm.us)  
Attorney for the Oil Conservation Division

**TITLE 19 NATURAL RESOURCES AND WILDLIFE  
CHAPTER 15 OIL AND GAS  
PART 8 FINANCIAL ASSURANCE**

**19.15.8.1 ISSUING AGENCY:** Energy, Minerals and Natural Resources Department, Oil Conservation Division.  
[19.15.8.1 NMAC - N, 12/1/08]

**19.15.8.2 SCOPE:** 19.15.8 NMAC applies to persons engaged in oil and gas development and production within New Mexico.  
[19.15.8.2 NMAC - N, 12/1/08]

**19.15.8.3 STATUTORY AUTHORITY:** 19.15.8 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11, Section 70-2-12 and Section 70-2-14.  
[19.15.8.3 NMAC - N, 12/1/08]

**19.15.8.4 DURATION:** Permanent.  
[19.15.8.4 NMAC - N, 12/1/08]

**19.15.8.5 EFFECTIVE DATE:** December 1, 2008, unless a later date is cited at the end of a section.  
[19.15.8.5 NMAC - N, 12/1/08]

**19.15.8.6 OBJECTIVE:** To establish financial assurance requirements for persons, firms, corporations or associations who have drilled or acquired, are drilling or propose to drill or acquire an oil, gas or injection or other service well to furnish financial assurance acceptable to the division.  
[19.15.8.6 NMAC - N, 12/1/08]

**19.15.8.7 DEFINITIONS:** [RESERVED]  
[See 19.15.2.7 NMAC for definitions.]

**19.15.8.8 GENERAL REQUIREMENTS FOR FINANCIAL ASSURANCE:**

**A.** The operator shall file financial assurance documents with the division's Santa Fe office and obtain approvals and releases of financial assurance from that office.

**B.** Financial assurance documents shall be on forms prescribed by or otherwise acceptable to the division.

**C.** The division may require proof that the individual signing for an entity on a financial assurance document or an amendment to a financial assurance document has the authority to obligate that entity.

**D.** Any time an operator changes the corporate surety, financial institution or amount of financial assurance, the operator shall file updated financial assurance documents on forms prescribed by the division. Notwithstanding the foregoing, if an operator makes other changes to its financial assurance documents, the division may require the operator to file updated financial assurance documents on forms prescribed by the division.

[19.15.8.8 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08; A, 6/30/15]

**19.15.8.9 FINANCIAL ASSURANCE FOR WELL PLUGGING:**

**A.** A person [~~firm, corporation or association~~] who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well on privately-owned or state-owned lands within this state shall furnish a financial assurance acceptable to the division in the form of an irrevocable letter of credit, plugging insurance policy, or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with division rules.

**B.** A financial assurance shall be conditioned for well plugging and abandonment and location restoration and remediation only, and not to secure payment for damages to livestock, range, crops or tangible improvements or any other purpose.

**C.** The division accepts [~~two~~] three forms of financial assurance: a one-well financial assurance that covers a single well, ~~and~~ a blanket financial assurance that covers multiple wells, and a blanket plugging financial assurance for wells in temporarily abandoned status. The operator shall cover a well that has been in temporary abandonment for more than two years by either a one-well financial assurance or a blanket plugging financial



assurance for wells in temporarily abandoned status, except that the division may waive the requirement of a one-well financial assurance for a well that is shut-in because of the lack of a pipeline connection. The division may release the one-well financial assurance upon the operator's or surety's written request after the well is returned to production if a blanket financial assurance covers the well. The division may release a blanket plugging financial assurance for wells in temporarily abandoned status upon the operator's or surety's written request after the wells are returned to production if a blanket financial assurance covers the wells or if the operator files a one-well financial assurance for each well of the operator's wells in temporarily abandoned status; upon the operator's or surety's written request, the amount of the operator's blanket financial assurance for wells held in temporarily abandoned status may be reduced in accordance with the number of wells the operator elects to cover by said financial assurance.

**D. Amounts.**

(1) A blanket financial assurance shall be in the amount of \$50,000 covering all oil, gas or service wells drilled, acquired or operated in this state by the principal on the bond.

(2) A one-well financial assurance shall be in the amounts stated below in accordance with the well's depth and location.

(a) Chaves, Eddy, Lea, McKinley, Rio Arriba, Roosevelt, Sandoval and San Juan counties, New Mexico: \$5000 plus \$1 per foot of projected depth of proposed well or measured depth of existing well.

(b) All other counties in the state: \$10,000 plus \$1 per foot of projected depth of proposed well or measured depth of existing well.

(3) The appropriate division district office may approve revised plans for an actively drilling well for drilling as much as 500 feet deeper than the depth stated on the well's financial assurance. A well to be drilled more than 500 feet deeper than the depth stated on the well's financial assurance shall be covered by a new financial assurance in the amount prescribed for the new projected depth.

(4) The amount of the one-well financial assurance required for an intentionally deviated well shall be determined by the well's measured depth, and not its true vertical depth.

(5) If an operator elects to cover wells held, or which may be held, in temporary abandonment by a blanket plugging financial assurance for wells in temporarily abandoned status, the operator shall do so in the amounts stated below in accordance with the number of wells covered by the blanket plugging financial assurance for wells in temporarily abandoned status.

(a) A blanket financial assurance for the first five wells shall be in the amount of \$150,000.

(b) A blanket financial assurance for the six to 10 wells shall be in the amount of \$300,000.

(c) A blanket financial assurance for the 11 to 25 wells shall be in the amount of \$500,000.

(d) A blanket financial assurance for more than 25 wells shall be in the amount of \$1,000,000.

E. Operators who have on file with the division a blanket financial assurance that does not cover additional wells shall file additional single well bond financial assurance for any wells not covered by the existing blanket bond or, in the alternative, may file a replacement blanket bond.

[19.15.8.9 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08; A, 6/30/15]

**19.15.8.10 ADDITIONAL REQUIREMENTS FOR CASH AND SURETY BONDS:**

**A.** Surety bonds shall be issued by a reputable corporate surety authorized by the office of the superintendent of insurance to do business in the state.

**B.** The operator shall deposit cash representing the full amount of the bond in an account in a federally-insured financial institution located within the state, such account to be held in trust for the division. Authorized representatives of the operator and the depository institution shall execute a document evidencing the cash bond's terms and conditions. The operator shall file the document with the division prior to the bond's effective date. If the operator's financial status or reliability is unknown to the director, the director may require the filing of a financial statement or such other information as may be necessary to evaluate the operator's ability to fulfill the bond's conditions. From time to time, any accrued interest over and above the bond's face amount may be paid to the operator.

[19.15.8.10 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08; A, 6/30/15]

**19.15.8.11 ADDITIONAL REQUIREMENTS FOR LETTERS OF CREDIT:**

- A. The division may accept irrevocable letters of credit issued by national or state-chartered banking associations.
- B. Letters of credit shall be irrevocable for a term of not less than five years, unless the applicant shows good cause for a shorter time period.
- C. Letters of credit shall provide for automatic renewal for successive, like terms upon expiration, unless the issuer has notified the division in writing of non-renewal at least 30 days prior to expiration.
- D. The division may forfeit and collect a letter of credit if not replaced by an approved financial assurance at least 30 days before the expiration date.
- E. Authorized representatives of the operator and the depository institution shall execute a document evidencing the line of credit's terms and conditions.

[19.15.8.11 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08; A, 6/30/15]

**19.15.8.12 RELEASE OF FINANCIAL ASSURANCE:**

- A. The division shall release a financial assurance document upon the operator's or surety's written request if all wells drilled or acquired under that financial assurance have been plugged and abandoned and the location restored and remediated and released pursuant to 19.15.25.9 NMAC through 19.15.25.11 NMAC, or have been covered by another financial assurance the division has approved.
- B. Transfer of a property or a change of operator does not of itself release a financial assurance. The division shall not approve a request for change of operator for a well until the new operator has the required financial assurance in place.

[19.15.8.12 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

**19.15.8.13 FORFEITURE OF FINANCIAL ASSURANCE:**

- A. Upon the operator's failure to properly plug and abandon and restore and remediate the location of a well or wells a financial assurance covers, the division shall give notice to the operator and surety, if applicable, and hold a hearing as to whether the well or wells should be plugged and abandoned and the location restored and remediated in accordance with a division-approved plugging program. If it is determined at the hearing that the operator has failed to plug and abandon the well and restore and remediate the location as provided for in the financial assurance or division rules, the director shall issue an order directing the well to be plugged or abandoned and the location restored and remediated in a time certain. Such an order may also direct the forfeiture of the financial assurance upon the failure or refusal of the operator, surety or other responsible party to properly plug and abandon the well and restore and remediate the location.
- B. If the financial assurance's proceeds exceed the costs the division incurred plugging and abandoning the well and restoring and remediating the location the financial assurance covers, the division shall return the excess to the surety or the operator, as appropriate.
- C. If the financial assurance's proceeds are not sufficient to cover all the costs the division incurred in plugging and abandoning the well and restoring and remediating the location, the division may seek indemnification from the operator as provided in NMSA 1978, Section 70-2-14(E).
- D. The division shall deposit forfeitures and funds collected pursuant to a judgment in a suit for indemnification in the oil and gas reclamation fund.

[19.15.9.13 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

**19.15.8.14 EFFECTIVE DATES:**

- A. 19.15.8 NMAC applies to wells drilled or acquired after December 15, 2005.
- B. As to all other wells, 19.15.8 NMAC is effective January 1, 2008.

[19.15.8.14 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

**19.15.8.15 ADDITIONAL REQUIREMENTS FOR PLUGGING INSURANCE POLICIES:**

- A. The plugging insurance policy must be issued by a company authorized by the office of the superintendent of insurance to do business in New Mexico.
- B. The policy shall name a specific well and name the state of New Mexico as the owner of the policy and contingent beneficiary.
- C. The policy shall name a primary beneficiary who agrees to plug the specified wellbore.
- D. The policy shall be fully prepaid and cannot be canceled or surrendered.
- E. The policy shall continue in effect until the specified wellbore has been plugged.

F. The policy shall provide that benefits will be paid when, but not before, the specified wellbore has been plugged in accordance with division rules in effect at the time of plugging.

G. The policy shall provide benefits that are not less than an amount equal to the one-well financial assurance required by division rules. If, subsequent to an operator obtaining an insurance policy, the one-well financial assurance requirement applicable to the operator's well covered by said policy increases, either because the well is deepened or the division's rules are amended, the operator will meet the additional financial assurance requirement by complying with one of the requirements below.

(1) The operator's existing policy benefit equals or exceeds the revised requirement.

(2) The operator obtains and files with the division within 30 days an amendment increasing the policy benefit by the amount of the increase in the applicable financial assurance requirement.

(3) The operator obtains financial assurance equal to the amount, if any, by which the revised requirement exceeds the policy benefit and files said financial assurance with the division within 30 days.

[19.15.8.15 NMAC - N, 6/30/15]

**19.15.8.16 DUTY TO REPORT:** Any operator who filed for bankruptcy shall provide notice to the division, in writing, through the processes provided for under the rules of the United States bankruptcy court.

[19.15.8.16 NMAC - N, 6/30/15]

#### **HISTORY of 19.15.8 NMAC:**

**History of Repealed Material:** 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/08.

#### **NMAC History:**

That applicable portion of 19.15.3 NMAC, Drilling (Section 101) (filed 10/29/2001) was replaced by 19.15.8 NMAC, Financial Assurance, effective 12/1/08.

**Notice of Public Meeting and Public Hearing**

**STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION  
SANTA FE, NEW MEXICO**

The State of New Mexico, through its Oil Conservation Commission hereby gives notice pursuant to law and Commission rules of the following meeting and public hearing to be held at 9:00 A.M. on **June 4, 2015**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, before the Oil Conservation Commission. A preliminary agenda will be available to the public no later than two weeks prior to the meeting. A final agenda will be available no later than 72 hours preceding the meeting.

***CASE 15314: Application of the Oil Conservation Division to Amend Title 19, Chapter 15, Part 8 Of The New Mexico Administrative Code ("Financial Assurance")***. The proposed rule amendments are intended to incorporate changes made by the Legislature to the New Mexico Oil and Gas Act and to make other changes including:

- (1) Establish amounts of blanket plugging financial assurance for wells in temporarily abandoned status;
- (2) Clarify and codify that, if a blanket bond no longer covers certain wells, additional financial assurance for the non-covered wells is required;
- (3) Codify requirements for operators who elect to maintain financial assurance through a plugging insurance policy;
- (4) Codify the requirement to notify the Division of any bankruptcy proceeding as required under rules of the United States bankruptcy court;
- (5) Require operators to update financial assurance documents when certain changes occur to existing financial assurance documents on file with the Division; and
- (6) Otherwise amend rule 19.15.8 NMAC to protect water, public health and the environment, prevent waste of oil and gas, and to protect correlative rights.

The proposed rule amendment and the meeting agenda are available from Commission Clerk Florene Davidson at (505) 476-3458 or can be viewed on the Hearings Page at Division's web site at <http://www.emnrd.state.nm.us/ocd>. **Modifications** to the proposed rule or amendment must be received by the Division no later than 5:00 P.M. on **May 21, 2015**. Persons intending to provide **written comments** on the proposed rule change must submit their written comments no later than 5:00 p.m. on **May 28, 2015** to the Division's Administrator. Persons intending to offer technical testimony at the hearing must file six copies of a **Pre-hearing Statement** conforming to the requirements of 19.15.3.11 NMAC, and six copies of all exhibits the person will offer in evidence at the hearing, no later than **May 28, 2015**. Proposed modifications and written comments may be hand-delivered or mailed to Ms. Davidson at 1200 South Saint Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at (505) 476-3462. Pre-hearing Statements must be hand-delivered or mailed to Ms. Davidson at the above address.

If you are an individual with disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505) 476-3458 or the New Mexico Relay Network at 1-800-659-1779. Public documents can be provided in various accessible forms. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A party who plans on using projection equipment at a hearing must contact Florene Davidson seven (7) business days prior to the hearing requesting the use of the projection equipment. Wireless internet is available; however, the party must provide its own laptop computer.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 1st day of May, 2015.

**STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION**

**David Catanach  
Director, Oil Conservation Division**

S E A L

