

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED BY THE
OIL CONSERVATION DIVISION ON ITS OWN MOTION
TO CONSIDER THE AMENDMENT OF RULE 101 RELATING
TO BONDS.

CASE No. 8878
Order No. R-8235

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on April 30 and May 14 and 28, 1986 at Santa Fe, New Mexico, before Examiners Michael E. Stogner and David R. Catanach.

NOW, on this 5th day of June, 1986, the Division Director, having considered the testimony presented and the exhibits received at said hearing, and the recommendations of the Examiners, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) Chapter 76 of the Laws of New Mexico (1986) amended the Oil and Gas Act at Section 70-2-14 NMSA 1978 to provide that the Oil Conservation Division may accept cash bonds as well as surety bonds to guarantee the plugging of abandoned oil and gas wells.

(3) Pursuant to the authority of said Chapter 76 the Division called a hearing for the purpose of adopting rules and regulations relating to the acceptance of cash bonds.

(4) Testimony at the hearing indicated that in many instances surety bonds now required to be posted by Division Rule 101 prior to the drilling of a well are impossible to obtain, and that the situation is contributing to depressed conditions in the oil and gas industry in New Mexico.

(5) In order to remedy this situation, witnesses testified that the Division should accept cash deposits in financial institutions for single well and blanket bond coverage. Testimony indicated that such cash bonds should not, however, be accepted unless surety bonds should be impossible to obtain or are unreasonably expensive.

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(6) Because of the potential liability undertaken by the acceptance of cash blanket bonds, witnesses suggested that the Division Director should have discretion in the issuance of blanket cash bonds and that disclosure of an applicant's financial status should be provided for prior to issuance of blanket bonds, as necessary.

(7) Although it was requested that bank-issued "Letters of Credit" be accepted in lieu of actual funds on deposit, a recent U.S. Supreme Court ruling that such Letters of Credit are not deposits for purposes of guaranteed payment makes their acceptance impractical.

(8) An order amending the Division's rule on plugging bonds (RULE 101) should be entered in a manner consistent with the above findings and will permit the drilling of wells which might otherwise not be drilled, thereby preventing waste.

IT IS THEREFORE ORDERED THAT:

(1) Rule 101 of the Division Rules is amended to read in its entirety as follows:

RULE 101. PLUGGING BOND

(a) Any person, firm, corporation, or association who has drilled or acquired, is drilling, or proposes to drill or acquire any oil, gas, or service well on privately owned or state owned lands within this state shall furnish to the Division, and obtain approval thereof, a surety bond running to the State of New Mexico, in a form prescribed by the Division, and conditioned that the well be plugged and abandoned in compliance with the rules and regulations of the Division. Such bond may be a one-well plugging bond or a blanket plugging bond. All bonds shall be executed by a responsible surety company authorized to do business in the State of New Mexico.

(b) Blanket plugging bonds shall be in the amount of fifty thousand dollars (\$50,000) conditioned as above provided, covering all oil, gas, or service wells drilled, acquired or operated in this state by the principal on the bond.

One-well plugging bonds shall be in the amounts stated below in accordance with the depth and location of the well:

Chaves, Eddy, Lea, McKinley, Rio Arriba, Roosevelt, Sandoval, and San Juan Counties, New Mexico:

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<u>Projected Depth of Proposed Well or Actual Depth of Existing Well</u>	<u>Amount of Bond</u>
Less than 5,000 feet	\$ 5,000
5,000 feet to 10,000 feet	\$ 7,500
More than 10,000 feet	\$10,000

All Other Counties in the State:

<u>Projected Depth of Proposed Well or Actual Depth of Existing Well</u>	<u>Amount of Bond</u>
Less than 5,000 feet	\$ 7,500
5,000 feet to 10,000 feet	\$10,000
More than 10,000 feet	\$12,500

Revised plans for an actively drilling well may be approved by the appropriate District Office of the Division for drilling as much as 500 feet deeper than the normal maximum depth allowed on the well's bond. Any well to be drilled more than 500 feet deeper than the normal depth bracket must be covered by a new bond in the amount prescribed for the deeper depth bracket.

The bond requirement for any intentionally deviated well shall be determined by the well's measured depth, and not its true vertical depth.

(c) Upon the filing by an operator of an affidavit stating that it cannot acquire a surety bond, a cash bond may be accepted by the Division pursuant to the conditions set forth hereinafter. Cash representing the full amount of the bond shall be deposited by the operator in an account in a federally-insured financial institution located within the State of New Mexico, such account to be held in trust for the Division. Both one well and blanket cash bonds shall be in the amount specified for surety bonds. A document, approved by the Division, evidencing the terms and conditions of the cash bond shall be executed by an authorized representative of the operator and the depository institution and filed with the Division prior to the effective date of the bond. No cash bond will be authorized by the Director and no wells may be drilled or acquired under a blanket cash bond unless the operator/-applicant is in good standing with the Division. If the financial status or reliability of the applicant is unknown to the Director he may require the filing of a financial statement or such other information as may be necessary to evaluate the ability of the applicant/operator to fulfill the conditions of the bond.

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From time to time any accrued interest over and above the face amount of the bond may be paid to the operator. Upon satisfactory plugging by the operator of any well(s) covered by a cash bond, the Director shall issue an order authorizing the release of said bond.

Any bond required by this rule is a plugging bond, not a drilling bond, and shall endure until any well drilled or acquired under such bond has been plugged and abandoned and such plugging and abandonment has been approved by the Division, or has been covered by another bond approved by the Division.

(d) Transfer of a property does not of itself release a bond. In the event of transfer of ownership of a well, the appropriate form, C-103 or C-104, properly executed, shall be filed with the District Office of the Division in accordance with Rule 1103 or Rule 1104 by the new owner of the well. The District Office may approve the transfer providing that a new one-well bond covering the well or a blanket bond in the name of the new owner has been approved by the Santa Fe office of the Division.

Upon approval of the bond and the Form C-103 or C-104, the transferor is released of plugging responsibility for the well, and upon request, the original bond will be released. No blanket bond will be released, however, until all wells covered by the bond have been plugged and abandoned or transferred in accordance with the provisions of this rule.

(e) All bonds shall be filed with the Santa Fe Office of the Division, and approval of such bonds, as well as releases thereof, obtained from said office.

(f) All bonds required by these rules shall be conditioned for well plugging and location cleanup only, and not to secure payment for damages to livestock, range, water, crops, tangible improvements, nor any other purpose.

(g) Upon failure of the operator to properly plug and abandon the well(s) covered by a bond, the Division shall give notice to the operator and surety, if applicable, and hold a hearing as to whether the well(s) should be plugged in accordance with a Division-approved plugging program. If, at the hearing, it is determined that the operator has failed to plug the well as provided for in the bond conditions and Division Rules, the Division Director shall issue an order directing the well(s) to be plugged in a time certain. Such an order may also direct the forfeiture of the bond upon the

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failure or refusal of the operator, surety, or other responsible party to properly plug the well(s). If the proceeds of the bond(s) are not sufficient to cover all of the costs incurred by the Division in plugging the well(s) covered by the bond, the Division shall take such legal action as is necessary to recover such additional costs. Any monies recovered through bond forfeiture or legal actions shall be placed in the Oil & Gas Reclamation Fund.


(2) The Division Director shall authorize such forms as are necessary to carry out the purposes of this rule, and from time to time amend such forms.

(3) This rule shall be reviewed at a hearing in June 1987 to determine whether it is appropriate in meeting the needs of industry.

(4) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


R. L. STAMETS,
Director

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