

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

**IN THE MATTER OF
PROPOSED AMENDMENTS TO
19.15.2, 19.15.5, 19.15.8, 19.15.9,
AND 19.15.25 NMAC**

CASE NO. 24683

**NEW MEXICO OIL AND GAS ASSOCIATION AND INDEPENDENT PETROLEUM
ASSOCIATION OF NEW MEXICO’S MOTION TO DISMISS**

The New Mexico Oil and Gas Association (“NMOGA”) and Independent Petroleum Association of New Mexico (“IPANM”) move the New Mexico Oil Conservation Commission (“OCC” or “Commission”) to dismiss the following portions of the proposed rules in the above-captioned matter because the proposed changes exceed the New Mexico Oil Conservation Division’s (“OCD” or “Division”) express statutory authority: 1) the proposed amendment to 19.15.8.9(A) NMAC extending OCD’s authority to regulating acquisitions, and 2) the proposed amendments under 19.15.8.9(D), (E), and (F) NMAC and the addition of 19.15.2.7(M)(2) NMAC, which exceed the express blanket, maximum bonding amount of \$250,000 established in the enabling provision of the New Mexico Oil and Gas Act, N.M. Stat. Ann. 1978 (“NMSA 1978”), Sections 70-2-1 to -44 (hereinafter, the “Act”).

Under the current regulations, adopted in 2018 after the Legislature considered and answered the same question that WELC now puts to the Commission, financial assurance for active wells ranges from \$25,000 plus \$2 per foot to a blanket maximum of \$250,000 for more than 100 wells. Adopting WELC’s Proposed Rules will multiply the required financial assurance exponentially, with the following consequences:

- For an operator with 1,000 wells, including 150 “marginal” wells, currently covered under an existing \$250,000 bond, the required financial assurance rockets to \$150,000,000—a 60,000% increase and 600 times the existing

legislative maximum.

- For an operator with five (5) wells, including one (1) “marginal” well, their current \$50,000 bond under WELC’s proposal becomes \$750,000—an increase by a multiple of 15 (1,500%) and three (3) times the legislatively set maximum.

In delegating the ability to “establish categories of financial assurance” to the Commission, made expressly subject to the Legislature’s reservation that blanket plugging financial assurances shall not exceed \$250,000, there is no room under the authority of the Oil and Gas Act to effect such sweeping changes by regulation. As explained below, OCD lacks statutory authority to enact these proposed changes, and the Commission must therefore dismiss changes under proposed 19.15.8.9(A), (D), (E), and (F), and 19.15.2.7(M)(2) NMAC from consideration as part of this rulemaking. Intervenor OXY USA Inc. supports this Motion to Dismiss. In support of its motion, NMOGA and IPANM state as follows:

I. BACKGROUND

1. On June 24, 2024, Western Environmental Law Center (“WELC”) filed its Application for Rulemaking in the above-captioned matter, assigned Case No. 24683.

2. After filing its application, WELC met with the OCD and ultimately adopted OCD’s major proposals into its proposed rules attached to its Revised Application filed April 25, 2025, as modified by the Notice of Errata filed June 2, 2025 (“Proposed Rules”).

3. On July 2, 2024, IPANM filed its entry of appearance and notice of intervention.

4. On July 16, 2024, NMOGA filed its entry of appearance and notice of intervention.

5. NMOGA and IPANM oppose the Proposed Rules and have offered targeted modifications to WELC’s proposed rule changes. Specifically, NMOGA and IPANM have significant concerns regarding the amendment of 19.15.8.9(A) and 19.15.8.9(D)-(F) NMAC and the addition of 19.15.2.7(M)(2) NMAC. *See* Proposed Rules, excerpted from WELC’s Revised

Application, attached hereto as Exhibit “A.”

6. NMOGA and IPANM addressed these concerns in separately filed Prehearing Statement and Direct Testimony, submitted on August 8, 2025.

7. This motion requests that the Commission dismiss from the rulemaking in Case No. 24683 those portions of the Proposed Rules that clearly exceed the statutory authority granted to OCD under the Act.

II. ARGUMENT

A. Applicable Law and Legal Standard

8. The bounds of the Commission’s and Division’s authority to promulgate binding regulations are established by the statutes granting them rulemaking authority. *Gonzales v. N.M. Educ. Ret. Bd.*, 1990-NMSC-024, ¶ 11, 109 N.M. 592, 595, 788 P.2d 348, 351 (1990) (“An agency may not create a regulation that exceeds its statutory authority.”) (citation omitted); *see* Rule 1-075(R)(3) NMRA (setting forth standard of review applied by New Mexico district courts when reviewing administrative decisions and orders as including “whether the action of the agency was outside the scope of authority of the agency”); *see also* NMSA 1978, 70-2-12.2(C)(1) (rule adopted under the Oil & Gas Act shall be set aside by Court of Appeals if found to be “arbitrary, capricious, or an abuse of discretion”).

9. Moreover, agency regulations must be reasonably related to the agency’s legislative purpose; otherwise, the rule is arbitrary and capricious and thus invalid. *See, e.g., N.M. Attorney Gen. v. N.M. Pub. Regulation Comm’n (AG v. PRC 2011)*, 2011-NMSC-034, ¶¶ 1, 18–19 (vacating the New Mexico Public Regulation Commission’s (“PRC”) final order adopting the revisions to energy efficiency regulations codified at 17.7.2 NMAC because in its rulemaking the PRC had not “adequately balance[d] the investors’ interests against the ratepayers’ interests when

adopting Alternative A” where the declared policy of the New Mexico Public Utility Act (“PUA”) is “that the public interest, the interest of consumers and the interest of investors require the regulation and supervision of public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates.”); *see Archuleta v. Santa Fe Police Dep’t*, 2005–NMSC–006, ¶ 18, 137 N.M. 161, 168, 108 P.3d 1019, 1026 (stating that a ruling that is not in accordance with the law should be reversed “if the agency unreasonably or unlawfully misinterprets or misapplies the law”); *Phelps Dodge Tyrone, Inc. v. New Mexico Water Quality Control Comm’n*, 2006–NMCA–115, ¶ 33, 140 N.M. 464, 472–73, 143 P.3d 502, 510–11 (“A conclusion reached using an overly broad legal standard is arbitrary and capricious and not in accordance with law.”); *Atlixco Coalition v. Maggiore*, 1998–NMCA–134, ¶ 24, 125 N.M. 786, 793, 965 P.2d 370, 377 (“[A]n agency’s action is arbitrary and capricious if it provides no rational connection between the facts found and the choices made, or entirely omits consideration of relevant factors or important aspects of the problem at hand.”).

10. Section 70-2-6 of the Act provides that:

The division shall have, and is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste of potash as a result of oil or gas operations in this state. It shall have jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas and the prevention of waste of potash as a result of oil or gas operations.

NMSA 1978, § 70-2-6. When read in conjunction with Section 70-2-11, the Act establishes that the authority and duty of the OCC and OCD have been constrained by the Legislature to enforce the provisions of the Act as related to the prevention of waste and protection of correlative rights affected by oil and gas operations in the State of New Mexico. *See* NMSA 1978, § 70-2-11 (concurrently with the Commission, “The division is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided.”)

11. The Supreme Court of New Mexico has confirmed that when the New Mexico Legislature enacted the Act and created the OCC and OCD, the legislature gave “the Commission and Division two major duties: the prevention of waste and the protection of correlative rights.” *Santa Fe Expl. Co. v. Oil Conservation Comm’n*, 1992-NMSC-044, ¶ 27, 114 N.M. 103, 835 P.2d 819 (citing NMSA 1978, § 70-2-11(A) and *Cont’l Oil Co. v. Oil Conservation Comm’n*, 1962-NMSC-062, ¶ 26, 373 P.2d 809). Section 70-2-11 codifies the Legislature’s assignment of the primary, twin duties to prevent waste and protect correlative rights “as...provided” by the Act. NMSA 1978, §§ 70-2-11 (A) & (B).

B. Because the OCC and OCD Do Not Possess Statutory Authority to Regulate *Acquisitions* Under the Act, the Proposed Amendment to 19.15.8.9(A) NMAC Extending OCD’s Authority to Regulate *Acquisitions* Must Be Dismissed

12. The OCD’s statutory authority under the Act does not include the authority to regulate acquisitions. Instead, the Act mandates that OCD prevent waste and protect correlative rights in the course of oil and gas operations. *Santa Fe Expl. Co.*, 1992-NMSC-044, ¶ 27.

13. WELC’s proposed addition to 19.15.8.9(A) NMAC extends OCD’s authority by vesting OCD with the power to regulate acquisitions—ownership transfers—which is not within OCD’s authority under Sections 70-2-6, -11, -12(A)(1)–(8), or 12(B)(1)–(22) of the Act.

14. First, the New Mexico Legislature would have to amend the Act to grant authority to the OCD to regulate acquisitions for the Division or Commission even to consider adopting WELC’s proposed amendment to 19.15.8.9(A) NMAC.¹ This has not happened. Without

¹ The New Mexico Legislative Finance Committee (“LFC”) acknowledged as much in its 2025 Policy Spotlight on Orphaned Wells. In researching and compiling information about plugging and abandonment of orphaned wells, the LFC recommended that the Legislature consider amending the Act to give the OCD additional authority to review and disallow the transfer of wells. Even the LFC acknowledges that the OCD does not have such authority and the Legislature has yet to make the recommended amendments. See WELC PHS, Ex. 4, New Mexico Legislative Finance Committee, *Policy Spotlight: Orphaned Wells* (June 24, 2025) at 2, 37 (recommending “[a]mending statute to grant the Oil Conservation Division the authority to review and disallow the transfer of wells should the division determine, through processes outlined in rule, that the purchaser is unlikely to be able to fulfill its asset retirement obligations”).

legislative action, WELC's proposed amendment must be dismissed from consideration under the rulemaking in Case No. 24683, as explained below.

15. Currently, 19.15.8.9(A) NMAC requires an operator to provide financial assurance to the OCD in the form of a letter of credit, plugging insurance policy, or surety bond if the operator "has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well within this state." That assurance secures the operator's regulatory obligations for proper decommissioning, including plugging and abandonment and site restoration. Importantly, while the current version of 19.15.8.9(A) requires financial assurance to be in place, it does not require the operator to obtain OCD pre-approval of the acquisition instrument as a condition to drilling or acquisition, and it does not prohibit the operator from proceeding with its proposed drilling or acquisition(s) absent that agency pre-approval.

16. WELC's Proposed Rule inserts the following sentence into 19.15.8.9(A) NMAC: "The division shall not approve, and the operator shall not proceed with, any proposed drilling or acquisition until the operator has furnished the appropriate financial assurance."² The language in the Proposed Rule imposes a new precondition that bars drilling or acquisitions unless and until financial assurance is both furnished **and approved**. Such a requirement exceeds the OCD's authority under the Act, which is limited to regulating operations. *See* NMSA 1978, § 70-2-6(A) (restricting OCD's authority to areas relevant "as a result of oil or gas operations"). The Act does not grant the OCD power to restrict acquisitions or impose pre-approval obligations beyond those set forth in the statute.

17. As noted above, the bounds of the OCC and OCD's authority to promulgate binding regulations are established by the statutes granting them rulemaking authority. *Gonzales*, 1990-

² Changes reflected by the Proposed Rules are shown by underlined text for insertions, and ~~strike-through~~ text for deletions.

NMSC-024, ¶ 11; Rule 1-075(R)(3) NMRA; NMSA 1978, 70-2-12.2(C)(1).

18. Moreover, agency regulations must be reasonably related to their legislative purpose; otherwise, the adopted rule is arbitrary and capricious and thus invalid. *See, e.g., NM AG v. NM PRC 2011*, 2011-NMSC-034, ¶¶ 1, 18–19 (“The PRC’s adoption of the adder rates was arbitrary and unlawful in that they were not evidence-based, cost-based, nor utility specific. We conclude, therefore, that the PRC’s Final Order is inconsistent with the law because the PRC had no basis in the record or determining that the adder rates contained in Alternative A were ‘just and reasonable’” as required under the PUA); *Phelps*, 2006-NMCA-115, ¶ 33 (holding use of “overly broad” standard was arbitrary and capricious and reversing New Mexico Water Quality Control Commission’s decision in part); *Atlixco*, 1998–NMCA–134, ¶ 24 (finding New Mexico solid waste regulations’ standard of review holds agency action arbitrary and capricious if no rational connection between facts and choice made or if relevant factors were ignored).

19. No provision of the Act authorizes OCD to regulate private assignments or acquisitions of real property interests.

20. In fact, the OCD’s authority is specifically restricted to areas relevant “as a result of oil or gas operations.” NMSA 1978, § 70-2-6(A). Ownership acquisition is a property transaction, not an “operation.” OCD’s statutory authority under the Act focuses on oil and gas operations, not business deals or property transfers. Giving OCD the authority to “approve” (or disallow) acquisitions, even for passive or non-operating interests, exceeds OCD’s statutory authority under the Act.

21. Nothing in the Act’s Enumeration of Powers, Section 70-2-12, authorizes OCD to regulate ownership transfers, which WELC’s proposed rule would now authorize OCD to regulate.

22. Additionally, no delegation in the laundry list of enumerated powers granted to the

OCC and OCD explicitly authorizes the regulation of ownership transfers. *See id.* at § 70-2-12(B). Section 70-2-12(B)(8) states, “[OCD] may make rules ... to identify the ownership of oil or gas producing leases, properties, wells, tanks, refineries, pipelines, plants, structures and all transportation equipment and facilities.” (emphasis added). While this subsection permits the OCD to make rules pertaining to the identification of the ownership of certain interests, it does not authorize the OCD to regulate the ownership transfers of these interests. *See id.*

23. The New Mexico Supreme Court has similarly rejected claims of rulemaking authority of the OCC and OCD when it has exceeded or run contrary to the explicit powers granted to them under the Oil and Gas Act. For example, in *Marbob Energy Corp v. N.M. Oil Conservation Comm’n*, the New Mexico Supreme Court reversed the Commission on OCD’s attempt to independently assess and enforce civil penalties under the Act.³ Section 70-2-31 provides for civil penalties against noncompliant parties, but Section 70-2-28 of the Act explicitly limited and bestowed upon the Attorney General sole authority to bring actions for the assessment of penalties. 2009-NMSC-013, ¶ 24, 146 N.M. 24, 206 P.3d 135.

24. In *Marbob*, the Commission and Division argued that the ability to internally assess and enforce penalties was “reasonably necessary” to effectuate the purpose of the Oil & Gas Act.⁴ The New Mexico Supreme Court held that the explicit delegation to the Attorney General in Section 70-2-28 overrules any broad reference of general authority to the OCC and OCD in the Oil and Gas Act under the rule of construction that specific statutory language limits general

³ Note, in that same September 2005 rulemaking at issue in *Marbob*, Case No. 13564, resulting in Order R-12452, OCD did not seek to exceed the statutorily set blanket financial assurance cap of \$50,000 under NSMA 1978, §70-2-14.

⁴ *See Marbob*, 2009-NMSC-013, ¶ 13 (“The Commission argues that the broad jurisdiction and authority given the Division in these sections to do whatever is reasonably necessary to enforce the Act ‘is a clear and explicit delegation of jurisdiction of penalty assessment cases.’ We disagree.”).

statutory language. *Id.*, ¶¶14–15.

25. *Marbob* establishes that adopting WELC’s amendment to 19.15.8.9(A) NMAC would require the Commission to ignore specific statutory language in favor of general grants of jurisdictional authority. Section 70-2-6 specifically restricts OCC and OCD’s authority to areas relevant “as a result of oil or gas operations,” and Section 70-2-12(B)(8) does not and cannot overcome this limitation. See *Amoco Production Co. v. Sea Robin Pipeline Co.*, 844 F.2d 1202, 1207 (5th Cir. 1988) (the undefined term “operations” in the Outer Continental Shelf Lands Act “refers to doing of some physical act” related to oil and gas exploration or production). To the extent that the Commission or OCD seeks additional power to oversee acquisitions, that application for enhanced authority lies before the Legislature.⁵

26. The nondelegation doctrine further circumscribes the Division’s authority. That doctrine, well settled in New Mexico’s jurisprudence, holds that the Legislature “may not vest unbridled or arbitrary authority in an administrative body...and must provide reasonable standards to guide it. This is because legislative power cannot be delegated, and the Legislature cannot confer upon any person, officer, or tribunal the right to determine what the law shall be.” *United N.M. v. Oliver*, 2019-NMSC-009, ¶ 8, 438 P.3d 343. The Legislature, through the Act, has delegated to the OCD only such authority as is necessary to regulate oil and gas operations. That grant of authority is not plenary. It does not encompass the power to condition private acquisitions of oil and gas leases or wells on the Division’s preclearance, for such transactions fall within the realm of private business judgment and real property law, not the regulation of oil and gas operations in

⁵ See *Marbob*, 2009-NMSC-013, “While not unsympathetic to the Commission’s professed need for greater enforcement authority, we defer, as we must, to the Legislature for the grant of that authority, and so too must the Commission. The Commission’s enabling statutes are undeniably dated, and perhaps inadequate to face the contemporary challenges the Commission appears to claim. However, any enhancements to the Commission’s authority must come from the same legislative body that created the Commission in the first instance.”).

New Mexico. The Commission, therefore, is prohibited from expanding OCD's authority beyond the Legislature's express delegation, which would otherwise contravene the constitutional limits imposed by the nondelegation doctrine.

27. The proposed language amending 19.15.8.9(A) NMAC must be dismissed from consideration under this rulemaking because it is not reasonably related to the legislative purpose of the Act, to oversee *operations*, and is therefore arbitrary and capricious and invalid. *See, e.g., NM AG v. NM PRC 2011*, 2011-NMSC-034, ¶¶ 1, 18–19; *Phelps*, 2006-NMCA-115, ¶ 33; *Archuleta*, 2005–NMSC–006, ¶ 18; *Atlixco*, 1998–NMCA–134, ¶ 24.

28. Most importantly, OCD lacks the authority to regulate oil and gas acquisitions. “An agency may not create a regulation that exceeds its statutory authority.” *Gonzales*, 1990-NMSC-024, ¶ 11. Therefore, WELC's proposed addition to 19.15.8.9(A) NMAC cannot be adopted by the Commission and must be dismissed from consideration under the rulemaking in Case No. 24683.

C. The Proposed Rules Exceed the Statutory Bonding Cap and Must Be Dismissed

29. WELC's proposed amendments to 19.15.8.9(D), (E), and (F) NMAC, as well as the proposed addition of a marginal well definition under 19.15.2.7(M)(2) NMAC, impermissibly exceed the express statutory ceiling on bonding established in Section 70-2-14(A). Because the Proposed Rules impose financial assurance obligations beyond the Legislature's clear limits, they fall outside the scope of the Division's enabling authority and must be dismissed from consideration in this rulemaking.

1. WELC's Proposed Changes to 19.15.8.9(D), (E), and (F) NMAC Circumvent the Express Statutory Blanket Bonding Limit.

30. WELC's proposed amendment to 19.15.8.9(D) NMAC adds a new category of active well bonding for “Marginal Wells” at \$150,000 per well, or \$150,000 for each well under a

single operator if their inventory is made up of 15% or more of marginal and/or inactive wells.

31. Under WELC's proposed amendment to 19.15.8.9(E) NMAC, the Division would require blanket financial assurance coverage averaging \$150,000 for inactive wells and for wells in approved, pending, or expired temporary abandonment status. *See* Ex. A at 3.⁶

32. Further, the amendment to 19.15.8.9(F) NMAC would impose an additional \$150,000 in per-well coverage for each well not already covered by a blanket financial assurance.⁷

33. This construct proposed by WELC is directly at odds with Section 70-2-14(A) of the Act, which authorizes the Commission to establish categories of plugging financial assurance but explicitly caps blanket coverage at \$250,000: "Such categories shall include a blanket plugging financial assurance, which shall be set by rule in an amount not to exceed two hundred fifty thousand dollars (\$250,000), [and] a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars (\$50,000)."

34. By layering additional per-well coverage requirements on top of the statutory

⁶ [19.15.8.9]E.D. **Inactive wells and wells in approved and expired temporarily abandoned status.** An operator shall provide financial assurance for wells that are inactive and wells in approved and expired temporarily abandoned status, covered by Subsection A of 19.15.8.9 NMAC that have been in temporarily abandoned status for more than two years or for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories:
 (1) a one well plugging financial assurance in the amount of \$150,000 per well; \$25,000 plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells; or
 (2) a blanket plugging financial assurance equal to an average of \$150,000 per well covering all wells of the operator subject to Subsection E.D of 19.15.8.9 NMAC.:
 (e) \$150,000 for one to five wells;
 (f) \$300,000 for six to 10 wells;
 (g) \$500,000 for 11 to 25 wells; and
 (h) \$1,000,000 for more than 25 wells.

⁷ [19.15.8.9]F.D. Operators who have on file with the division a blanket plugging financial assurance that does not cover additional wells shall file additional one single well plugging bond financial assurance for any wells not covered by the existing blanket plugging financial assurance bond in an amount as determined by Section 19.15.8.9 NMAC, subject to any limitations in Section 70-2-14 NMSA 1978, or, in the alternative, may file a replacement blanket bond.

blanket maximum, WELC's proposal seeks to do indirectly what the Legislature has expressly prohibited: exceed the \$250,000 cap through regulatory fiat. This approach would effectively nullify the statutory ceiling by ratcheting up financial assurance obligations beyond the Legislature's intent.

35. It is undisputed that the Legislature has already considered and rendered policy decisions on financial assurance levels in the recent past. In 2018, under Senate Bill 189, the Legislature approved an increase of the blanket plugging bond from \$50,000 to \$250,000.⁸ Again in 2024, under House Bill 133, the OCD sought to increase financial assurance amounts. This effort, supported by OCD and its parent department, Environment, Mineral and Natural Resources Department, passed committees on party lines, but the Legislature declined to take up the proposed changes to the Act on the floor.⁹

36. Of significance to the issue of financial assurance increases, during committee hearings on HB133, members of both parties were especially sensitive to the adverse economic consequences wrought by such policy decisions. The Legislative Finance Committee Fiscal Impact Report for HB133 ("LFC FIR") estimated an over \$800 million decrease in revenues to the state, with the caution that projected deficits only anticipated the effects on wells to be permitted in the future. *See* LFC FIR at 3, 4 ("Fiscal implications for already permitted wells were not considered in this bill's analysis If this legislation negatively impacts production from already permitted wells, the financial costs estimated on page one could increase significantly and commence earlier than indicated."). With respect to "marginal wells," the affected population of

⁸ *See* Laws 2018, ch. 16, § 2, available at: <https://nmonesource.com/nmos/nmsl/en/item/4477/index.do#c16s2>, last accessed September 8, 2025, codified NMSA 1978, §70-2-14(A) (2019).

⁹ *See* Legislation Listing "HB133", New Mexico Legislature, available at: <https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=133&year=24>, last accessed September 8, 2025.

wells are already-permitted and were thus excluded from the LFC Financial Impact Report's conservative economic estimates for HB133. Accordingly, WELC's proposed amendments exceed the Division's statutory authority.¹⁰ Because the Commission is bound to act within the limits of its enabling statute, the proposed language must be dismissed as *ultra vires* and outside the scope of this rulemaking. *Unite N.M. v. Oliver*, 2019-NMSC-009, ¶ 8, 438 P.3d 343; *see generally Santa Fe Expl. Co.*, 1992-NMSC-044, ¶¶ 26–27 (applying the *ultra vires* doctrine application to the rulemaking context).

2. WELC's Proposed "Marginal Wells" Category Exceeds OCD's Statutory Authority.

37. WELC's proposal to define and regulate "marginal wells" under its proposed amendment under proposed 19.15.8.9(D) NMAC impermissibly creates a new well classification and imposes new financial assurance obligations not authorized by statute.

38. Specifically, the Proposed Rule removes certain active wells from the statutory blanket financial assurance cap of \$250,000 under Section 70-2-14(A) and instead requires a \$150,000 "one-well" financial assurance for each "marginal well."

39. This change directly conflicts with Section 70-2-14(A), which provides that blanket plugging financial assurance "shall be set by rule in an amount not to exceed two hundred fifty thousand dollars (\$250,000)." The Act contains no authorization for the Commission to carve out additional categories of active wells to evade this express cap.

40. The Legislature has demonstrated that when it intends to authorize new categories of financial assurance beyond the blanket cap, it does so expressly. Recently, in 2015, it amended

¹⁰ WELC expert Peter Morgan admits "statutory limits on financial assurance" exist in his Direct Testimony. Direct Testimony of Peter Morgan, JD, WELC Technical Expert, Exhibit 15 to WELC Prehearing Statement, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025, at 29:13-14, n.63 (citing State of New Mexico Energy, Minerals, and Natural Resources Department, State of New Mexico Application for Initial Grant Funding for Orphan Well Plugging under the Infrastructure Investment and Jobs Act (May 13, 2022), Exhibit 23 to WELC Prehearing Statement, at p. 23 ("because of statutory limits on financial assurance the amounts available for forfeiture are typical [sic] below plugging costs.")).

Section 70-2-14(A) to create a specific category for “temporarily abandoned status wells” and to authorize bonding for those wells in amounts exceeding \$50,000.¹¹ More recently, in 2018, the Legislature amended the statute again, raising the blanket financial assurance cap fivefold, from \$50,000 to \$250,000.¹² At no point has the Legislature authorized a new category for “marginal wells” or permitted per-well bonding for active wells outside the temporary abandonment context.

41. WELC’s proposed rule circumvents the Legislatively-set financial assurance limit on active wells repeatedly by: 1) defining a certain subset of active wells as “marginal wells”; 2) removing marginal wells from the blanket \$250,000 cap; 3) requiring a \$150,000 per-well bond for each active but marginal well; and 4) mandating that if 15% or more of an operator’s wells are deemed “marginal or inactive,” the operator must then provide \$150,000 per-well financial assurance for its entire portfolio—including all other active, non-marginal producing wells. WELC’s amendments nullify the Legislature’s chosen ceiling and replace it with an unlimited bonding scheme.

42. The Legislature has not authorized such an expansion. To the contrary, Section 70-2-14(A) expressly limits single-well bonding to wells “held in a temporarily abandoned status for more than two years.” If the Division could require per-well financial assurance for active wells at any time, the \$250,000 statutory cap—and the carefully drawn single-well provision—would be rendered meaningless and superfluous.

43. The New Mexico Supreme Court has repeatedly held that the OCC and OCD, as

¹¹ See Laws 2015, ch. 99, § 1 Laws 2015, ch. 79, § 1, <https://nmonesource.com/nmos/nmsl/en/item/4457/index.do#c79s1>, last accessed September 8, 2025; see also OCC Case No. 15314, Order R-13996 (rulemaking following enactment of House Bill 383 and Senate Bill 442 establishing blanket financial assurance amounts for temporarily abandoned status wells).

¹² See Laws 2018, ch. 16, § 2, available at: <https://nmonesource.com/nmos/nmsl/en/item/4477/index.do#c16s2>, last accessed September 8, 2025, codified NMSA 1978, §70-2-14(A) (2019); see also OCC Case No. 16078 (rulemaking following enactment of SB189).

creatures of statute, must act strictly within the bounds of their enabling legislation. *Sims v. Mechem*, 1963-NMSC-103, ¶ 11, 72 N.M. 186, 382 P.2d 183 (holding the Commission lacked authority to issue a compulsory pooling order where it failed to make the statutorily required finding of waste); *see also Public Serv. Co. of N.M. v. N.M. Env't Improvement Bd.*, 1976-NMCA-039, ¶ 7, 89 N.M. 223, 549 P.2d 638. In *Sims*, the Court emphasized that the Commission “must fully comply with its creating law to possess any jurisdiction in a matter.” *Id.* Moreover, upon *de novo* judicial review of statutory construction, adopted rules will only be upheld if in keeping with the agency's express statutory authority or fairly implied as necessary to exercise those same powers. *N.M. Mining Ass'n v. N.M. Mining Comm'n*, 1996-NMCA-098, ¶ 15, 122 N.M. 332, 924 P.2d 741; *see also Marbob Energy Corp.*, 2009-NMAC-013, ¶ 7 (concluding “statutory construction is not within the Commission’s specialized expertise” and therefore, not entitled to special deference) (citing *N.M. Indus. Energy Consumers*, 2007-NMSC-053, ¶ 19, 142 N.M. 533, 168 P.3d 105).

44. The same principle applies here. To adopt WELC’s proposed amendments, the OCC and OCD would have to assume powers the Legislature has not conferred. Moreover, the proposal to impose a uniform \$150,000 per-well bond disregards Section 70-2-14(A)’s express directive that financial assurance amounts must account for factors such as well depth, production history, and comparable plugging costs.

45. Testimony in this proceeding further calls into question whether the \$150,000 individual well assurance amount accounts for the above factors and “reasonably pay[s] the cost of plugging the well,” NMSA 1978, §70-2-14(A), or is excessive.¹³ Section 70-2-14(A) of the Act

¹³ Direct Testimony of Robert Arscott, Ph.D., IPANM Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025, at 2. *See also* Direct Testimony of Daniel Arthur, P.E., NMOGA Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025, at 29-30 (“One of the

limits the OCD financial assurance requirements it authorizes to amounts reasonably required to secure the costs to plug and abandon the subject well(s), with no express mention of reclamation costs in the statute.

46. Because WELC's provisions attempt to create new categories of financial assurance untethered from statutory authority, the changes exceed the Commission's rulemaking power. The proposed "marginal well" amendments, NMAC 19.15.2.7(M)(2), 19.15.8.9(D), (E) & (F) must therefore be dismissed from the rulemaking in Case No. 24683 as *ultra vires* and invalid.

47. Beyond exceeding statutory limits, WELC's proposal would upend the careful balance the Legislature struck in amending Section 70-2-14 in 2015 and 2018. The Legislature deliberately calibrated financial assurance obligations to ensure adequate protection while preserving operators' ability to develop resources. By imposing per-well requirements far beyond the statutory cap, WELC's proposed rules would destabilize that balance, discourage investment, and create regulatory uncertainty. In this respect, the proposal is not merely unauthorized—it is also unsound policy that undermines the Legislature's considered judgment.

problems with the single well financial assurance approach under consideration, and described above by well type affected, is that it bears no relationship to risk or lived experience. It is true that some wells can be expensive to plug and abandon. It is equally true that some wells – in my view, many wells – can be fully plugged and abandoned for far less than \$150,000. The applicant's proposal (and the OCD proposal) does not reflect this fact. In my experience, the cost of plugging and abandoning an oil and gas well can vary enormously. That is why I think a bonding regime should take experience, risk, well characteristics, and other factors into account. I've witnessed many wells that were plugged and abandoned for \$20,000 or even less. A shallow vertical well might be plugged and abandoned for even less than \$20,000. A coalbed methane well would fall into a similar range. Of course, a long horizontal well might demand greater costs to abandon, but it is important to remember that even there, only the vertical wellbore will be cemented; there is no need to cement a long horizontal well segment buried deep underground with no connection to the surface or shallower formations."). See also Direct Testimony of Harold McGowen, P.E., NMOGA Technical Expert, *In the Matter of Proposed Amendments to 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC*, No. 24683, OCC, Aug. 8, 2025, at 85 ("Depth correlates so strongly with cost that any logical bonding regime should 1761 take it into account, rather than impose a flat figure."), 91 ("Given the wide variability in plugging costs and the importance of well-specific risk factors, it is far more sensible to adopt a flexible financial assurance scheme rather than a 'one-size-fits-all' \$150,000 per-well bond. Regulators should establish bond levels according to the assessed risk and clearly documented characteristics of specific well categories within an operator's portfolio, thereby ensuring that required securities correspond to actual potential plugging and abandonment liabilities.").

III. CONCLUSION

48. For the reasons set forth above, NMOGA and IPANM respectfully request that WELC's proposed amendments to NMAC 19.15.2.7.(M)(2), 19.15.8.9(A), (D), (E) & (F) be dismissed from Case No. 24683. Each Proposed Rule suffers from the same fundamental flaw: they extend beyond the authority the Legislature has expressly delegated to the OCD and the Commission.

49. The proposed amendment to 19.15.8.9(A) NMAC improperly expands the Division's jurisdiction from regulating operations into regulating private acquisitions—an authority the Oil & Gas Act—the Commission's enabling authority—does not confer.

50. The proposed amendments to 19.15.8.9(D), (E), and (F) NMAC, together with the addition of 19.15.2.7.(M)(2) NMAC, impermissibly circumvent the Legislature's clear command that blanket financial assurance for active wells may not exceed \$250,000.

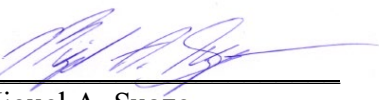
51. The Commission is a creature of statute and is bound to act within its statutory framework established by the Legislature. When the Legislature sought to expand financial assurance requirements, it has done so expressly—and recently—seen in the 2015 and 2018 amendments to Section 70-2-14. Absent such legislative action, the Commission cannot, by rule or fiat, enlarge its own authority or the authority of the Division. Adopting WELC's Proposed Rules renders controlling statutory limits meaningless and contravenes both the text and structure of the Act.

52. Accordingly, because the Proposed Rules exceed the Division's statutory authority and undermine the balance the Legislature deliberately struck, NMOGA and IPANM respectfully request that the Commission dismiss WELC's proposed language in its entirety.

Respectfully submitted,

DATED: September 15, 2025.

BEATTY & WOZNIAK, P.C.

By: 
Miguel A. Suazo
James P. Parrot
James Martin
Jacob L. Everhart
500 Don Gaspar Ave.,
Santa Fe, NM 87505
(505) 946-2090
msuazo@bwenergylaw.com
jparrot@bwenergylaw.com
jmartin@bwenergylaw.com
jeverhart@bwenergylaw.com

Attorneys for New Mexico Oil and Gas Association

HINKLE SHANOR LLP

By: /s/ Andrew J. Cloutier
Andrew J. Cloutier
Ann Cox Tripp
P.O. Box 10
Roswell, NM 88202-0010
acloutier@hinklelawfirm.com
atripp@hinklelawfirm.com

Attorneys for Independent Petroleum Association of New Mexico

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served to counsel of record by electronic mail this 15th day of September, 2025, as follows:

Tannis Fox
Senior Attorney
Morgan O'Grady
Staff Attorney
Western Environmental Law Center
409 East Palace Avenue, #2
Santa Fe, New Mexico 87501
505.629.0732
fox@westernlaw.org
ogrady@westernlaw.org

Kyle Tisdell
Managing Attorney
Western Environmental Law Center
208 Paseo del Pueblo Sur, #602
Taos, New Mexico 87571
575.613.8050
tisdell@westernlaw.org

Matt Nykiel
Staff Attorney
Western Environmental Law Center
224 West Rainbow Boulevard, #247
Salida, Colorado 81201
720.778.1902
nykiel@westernlaw.org
*Attorneys for Applicants Western
Environmental Law Center, Citizens Caring
for the Future, Conservation Voters New
Mexico Education Fund, Diné C.A.R.E.,
Earthworks, Naeva, New Mexico Interfaith
Power and Light, San Juan Citizens Alliance,
and Sierra Club.*

Jesse Tremaine
Chris Moander
Assistant General Counsels
New Mexico Energy, Minerals, and Natural
Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
jessek.tremaine@emnrd.nm.gov
chris.moander@emnrd.nm.gov
Attorneys for Oil Conservation Division

Michael H. Feldewert
Adam G. Rankin
Paula M. Vance
P.O. Box 2208
Santa Fe, New Mexico 87504
mfeldewert@hollandhart.com
agrankin@hollandhart.com
pmvance@hollandhart.com
Attorneys for OXY USA Inc.

Andrew J. Cloutier
Ann Cox Tripp
Hinkle Shanor LLP
P.O. Box 10
Roswell, New Mexico 88202-0010
acloutier@hinklelawfirm.com
atripp@hinklelawfirm.com
*Attorneys for Independent Petroleum
Association of New Mexico*

Felicia Orth
Hearing Officer
New Mexico Energy, Minerals, and Natural
Resources Department
Wendell Chino Building
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Felicia.l.orth@gmail.com
*Oil Conservation Commission Hearing
Officer*

Zachary A. Shandler
Assistant Attorney General
New Mexico Department of Justice
P.O. Box 1508
Santa Fe, New Mexico 87504
zshandler@nmdoj.gov
Oil Conservation Commission Counsel

Mariel Nanasi
Lead Attorney and Executive Director
New Energy Economy
422 Old Santa Fe Trail
Santa Fe, NM 87501
mnanasi@newenergyeconomy.org
Attorney for New Energy Economy

Jennifer L. Bradfute
Matthias Sayer
Bradfute Sayer P.C.
P.O. Box 90233
Albuquerque, New Mexico 87199
jennifer@bradfutelaw.com
matthias@bradfutelaw.com

Jordan L. Kessler
EOG Resources, Inc.
125 Lincoln Avenue, Suite 213
Santa Fe, New Mexico 87501
Jordan_kessler@eogresources.com
Attorneys for EOG Resources, Inc.

Sheila Apodaca
New Mexico Energy, Minerals, and Natural
Resources Department
Wendell Chino Building
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
occ.hearings@emnrd.nm.gov
Oil Conservation Commission Clerk

Nicholas R. Maxwell
P.O. Box 1064
Hobbs, New Mexico 888241
inspector@sunshineaudit.com


Rachael Ketchledge

EXHIBIT A

EXHIBIT A-1

APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.2 NMAC

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 2 GENERAL PROVISIONS FOR OIL AND GAS OPERATIONS

19.15.2.1 ISSUING AGENCY: Oil Conservation Commission.
 [19.15.2.1 NMAC - Rp, 19.15.1.1 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.2 SCOPE: 19.15.2 NMAC applies to persons or entities engaged in oil and gas development and production within New Mexico and to 19.15.2 NMAC through 19.15.39 NMAC.
 [19.15.2.2 NMAC - Rp, 19.15.1.2 NMAC, 12/1/2008]

19.15.2.3 STATUTORY AUTHORITY: 19.15.2 NMAC is adopted pursuant to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, which grants the oil conservation division jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash because of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations.
 [19.15.2.3 NMAC - Rp, 19.15.1.3 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.4 DURATION: Permanent.
 [19.15.2.4 NMAC - Rp, 19.15.1.4 NMAC, 12/1/2008]

19.15.2.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
 [19.15.2.5 NMAC - Rp, 19.15.1.5 NMAC, 12/1/2008]

19.15.2.6 OBJECTIVE: To set forth general provisions and definitions pertaining to the authority of the oil conservation division and the oil conservation commission pursuant to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978.
 [19.15.2.6 NMAC - Rp, 19.15.1.6 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.7 DEFINITIONS: These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.

- A. Definitions beginning with the letter "A".**
- (1) "Abate" means to investigate, contain, remove or mitigate water pollution.
 - (2) "Abatement" means the investigation, containment, removal or other mitigation of water pollution.
 - (3) "Abatement plan" means a description of operational, monitoring, contingency and closure requirements and conditions for water pollution's prevention, investigation and abatement.
 - (4) "Act" or "Oil and Gas Act" means Chapter 70, Article 2 NMSA 1978, as it may be modified or amended.
 - (5) "Adjoining spacing units" mean those existing or prospective spacing units in the same pool that are touching at a point or line on the subject spacing unit.
 - (6) "Adjusted allowable" means the allowable production a well or proration unit receives after all adjustments are made.
 - (7) "AFE" means authorization for expenditure.
 - (8) "Affected persons" means the following persons owning interests in a spacing unit or other identified tract:
 - (a) the operator, as shown in division records, of a well on the tract, or, if the tract is included in a division-approved or federal unit, the designated unit operator;
 - (b) in the absence of an operator, or with respect to an application wherein the operator of the spacing unit or identified tract is the applicant, each working interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant files the application;
 - (c) as to any tract or interest therein that is not subject to an existing oil and gas lease, each mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application; and
 - (d) if the United States or state of New Mexico owns the mineral estate in the spacing unit or identified tract or any part thereof, the BLM or state land office, as applicable; or

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(e) if the mineral estate in the spacing unit or identified tract or any part thereof is tribal land, the BLM, the United States department of the interior, bureau of Indian affairs, and the relevant tribe.

(9) **"Allocated pool"** means a pool in which the total oil or gas production is restricted and is allocated to various wells in the pool in accordance with proration schedules.

(10) **"Allowable production"** means that number of barrels of oil or cubic feet of gas the division authorizes to be produced from an allocated pool.

(11) **"APD"** means application for permit to drill.

(12) **"API"** means the American petroleum institute.

(13) **"Approved temporary abandonment," "temporary abandonment," or "temporarily abandoned status"** means the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC and complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

(14) **"Aquifer"** means a geological formation, group of formations or a part of a formation that can yield a significant amount of water to a well or spring.

(15) **"ASTM"** means ASTM International - an international standards developing organization that develops and publishes voluntary technical standards for a wide range of materials, products, systems and services.

B. Definitions beginning with the letter "B".

(1) **"Back allowable"** means the authorization for production of an underproduction resulting from pipeline proration.

(2) **"Background"** means, for purposes of ground water abatement plans only, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person's facility. This definition does not prevent the director from requiring abatement of commingled plumes of pollution, does not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons and does not preclude the director from exercising enforcement authority under any applicable statute, rule or common law.

(3) **"Barrel"** means 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.

(4) **"Barrel of oil"** means 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.

(5) **"Barrel of oil equivalent" is determined by converting the volume of gas the well produced to barrels of oil by using a ratio of 6,000 cubic feet to one barrel of oil.**

~~(5)~~(6) **"Below-grade tank"** means a vessel, excluding sumps and pressurized pipeline drip traps, where a portion of the tank's sidewalls is below the surrounding ground surface's elevation. Below-grade tank does not include an above ground storage tank that is located above or at the surrounding ground surface's elevation and is surrounded by berms.

(7) **"Beneficial purposes" or "beneficial use" means an oil or gas well that is being used in a productive or beneficial manner such as production, injection or monitoring, and does not include use of a well for speculative purposes.**

~~(6)~~(8) **"Berm"** means an embankment or ridge constructed to prevent the movement of liquids, sludge, solids or other materials.

~~(7)~~(9) **"Biopile"**, also known as biocell, bioheap, biomound or compost pile, means a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through biodegradation. This technology involves heaping contaminated soils into piles or "cells" and stimulating aerobic microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.

~~(8)~~(10) **"BLM"** means the United States department of the interior, bureau of land management.

~~(9)~~(11) **"Bottom hole pressure"** means the gauge pressure in psi under conditions existing at or near the producing horizon.

~~(10)~~(12) **"Bradenhead gas well"** means a well producing gas through wellhead connections from a gas reservoir that has been successfully cased off from an underlying oil or gas reservoir.

~~(11)~~(13) **"BS&W"** means basic sediments and water.

~~(12)~~(14) **"BTEX"** means benzene, toluene, ethylbenzene and xylene.

C. Definitions beginning with the letter "C".

(1) **"Carbon dioxide gas"** means noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

(2) **"Casinghead gas"** means a gas or vapor or both gas and vapor indigenous to and produced from a pool the division classifies as an oil pool. This also includes gas-cap gas produced from such an oil pool.

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(3) **“Certified mail” or “certified mail, return receipt requested”** means United States Postal Service Certified Mail or equivalent service that provides tracking and signature receipt, including Federal Express, United Parcel Service, or similar courier services.

(4) **“Cm/sec”** means centimeters per second.

(5) **“CPD”** means central point delivery.

(6) **“Combination multiple completion”** means a multiple completion in which two or more common sources of supply are produced through a combination of two or more conventional diameter casing strings cemented in a common well bore, or a combination of small diameter and conventional diameter casing strings cemented in a common well bore, the conventional diameter strings of which might or might not be a conventional multiple completion.

(7) **“Commission”** means the oil conservation commission.

(8) **“Commission clerk”** means the division employee the director designates to provide staff support to the commission and accept filings in rulemaking or adjudicatory cases before the commission.

(9) **“Common purchaser for gas”** means a person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells within each common source of supply from which it purchases.

(10) **“Common purchaser for oil”** means every person now engaged or hereafter engaging in the business of purchasing oil to be transported through pipelines.

(11) **“Common source of supply”**. See pool.

(12) **“Condensate”** means the liquid recovered at the surface that results from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

(13) **“Contiguous”** means acreage joined by more than one common point, that is, the common boundary is at least one side of a governmental quarter-quarter section.

(14) **“Conventional completion”** means a well completion in which the production string of casing has an outside diameter exceeding 2.875 inches.

(15) **“Conventional multiple completion”** means a completion in which two or more common sources of supply are produced through one or more strings of tubing installed within a single casing string, with the production from each common source of supply completely segregated by means of packers.

(16) **“Correlative rights”** means the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas in the pool, being an amount, so far as can be practically determined, and so far as can be practically obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner's just and equitable share of the reservoir energy.

(17) **“Cubic feet of gas or cubic foot of gas”** means that volume of gas contained in one cubic foot of space and computed at a base pressure of 10 ounces per square inch above the average barometric pressure of 14.4 psi (15.025 psi absolute), at a standard base temperature of 60 degrees fahrenheit.

D. Definitions beginning with the letter “D”.

(1) **“Deep pool”** means a common source of supply that is situated 5000 feet or more below the surface.

(2) **“Depth bracket allowable”** means the basic oil allowable the division assigns a pool and based on its depth, unit size or special pool orders, which, when multiplied by the market demand percentage factor in effect, determines the pool's top proration unit allowable.

(3) **“Director”** means the director of the New Mexico energy, minerals and natural resources department, oil conservation division.

(4) **“Division”** means the New Mexico energy, minerals and natural resources department, oil conservation division.

(5) **“Division clerk”** means the division employee the director designates to accept filings in adjudicatory cases before the division.

(6) **“Downstream facility”** means a facility associated with the transportation (including gathering) or processing of gas or oil (including a refinery, gas plant, compressor station or crude oil pump station); brine production; or the oil field service industry.

(7) **“DRO”** means diesel range organics.

E. Definitions beginning with the letter “E”.

(1) **“EC”** means electrical conductivity.

(2) **“Enhanced oil recovery project”** means the use or the expanded use of a process for the

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displacement of oil from an oil well or division-designated pool other than a primary recovery process, including but not limited to the use of a pressure maintenance process; a water flooding process; an immiscible, miscible, chemical, thermal or biological process; or any other related process.

(3) **“EOR project”** means an enhanced oil recovery project.

(4) **“EPA”** means the United States environmental protection agency.

(5) **“Exempted aquifer”** means an aquifer that does not currently serve as a source of drinking water, and that cannot now and will not in the foreseeable future serve as a source of drinking water because:

(a) it is hydrocarbon producing;

(b) it is situated at a depth or location that makes the recovery of water for drinking water purposes economically or technologically impractical; or

(c) it is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption.

(6) **“Exempt waste”** means oil field waste exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(7) **“Existing spacing unit”** means a spacing unit containing a producing well.

(8) **“Expired temporary abandonment” or “expired temporary abandonment status”** means the status of a well that is inactive and has been approved for temporary abandoned status in accordance with 19.15.25.13 NMAC, but that no longer complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

F. Definitions beginning with the letter “F”.

(1) **“Facility”** means a structure, installation, operation, storage tank, transmission line, access road, motor vehicle, rolling stock or activity of any kind, whether stationary or mobile.

(2) **“Field”** means the general area that at least one pool underlies or appears to underlie; and also includes the underground reservoir or reservoirs containing oil or gas. The words field and pool mean the same thing when only one underground reservoir is involved; however, field unlike pool may relate to two or more pools.

(3) **“Fresh water”** to be protected includes the water in lakes and playas (regardless of quality, unless the water exceeds 10,000 mg/l TDS and it can be shown that degradation of the particular water body will not adversely affect hydrologically connected fresh ground water), the surface waters of streams regardless of the water quality within a given reach, and underground waters containing 10,000 mg/l or less of TDS except for which, after notice and hearing, it is found there is no present or reasonably foreseeable beneficial use that contamination of such waters would impair.

G. Definitions beginning with the letter “G”.

(1) **“Gas”**, also known as natural gas, means a combustible vapor composed chiefly of hydrocarbons occurring naturally in a pool the division has classified as a gas pool.

(2) **“Gas lift”** means a method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.

(3) **“Gas-oil ratio”** means the ratio of the casinghead gas produced in standard cubic feet to the number of barrels of oil concurrently produced during any stated period.

(4) **“Gas-oil ratio adjustment”** means the reduction in allowable of a high gas oil ratio unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.

(5) **“Gas transportation facility”** means a pipeline in operation serving gas wells for the transportation of gas, or some other device or equipment in like operation where the gas produced from gas wells connected with the pipeline or other device or equipment can be transported or used for consumption.

(6) **“Gas well”** means a well producing gas from a gas pool, or a well with a gas-oil ratio exceeding 100,000 cubic feet of gas per barrel of oil producing from an oil pool.

(7) **“Geomembrane”** means an impermeable polymeric sheet material that is impervious to liquid and gas if it maintains its integrity and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system.

(8) **“Geotextile”** means a sheet material that is less impervious to liquid than a geomembrane but more resistant to penetration damage, and is used as part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for drainage, to serve as a cushion to protect geomembranes or to provide structural support.

(9) **“GRO”** means gasoline range organics.

(10) **“Ground water”** means interstitial water that occurs in saturated earth material and can enter a well in sufficient amounts to be used as a water supply.

(11) **“Ground water sensitive area”** means an area the division specifically designates after

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evaluation of technical evidence where ground water exists that would likely exceed WQCC standards if contaminants were introduced into the environment.

H. Definitions beginning with the letter "H".

(1) **"Hardship gas well"** means a gas well where underground waste occurs if the well is shut-in or curtailed below its minimum sustainable flow rate.

(2) **"Hazard to public health"** exists when water that is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of the use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if a toxic pollutant as defined at Subsection WW of 20.6.2.7 NMAC affecting human health is present in the water. In determining whether a release would cause a hazard to public health to exist, the director investigates and considers the purification and dilution reasonably expected to occur from the time and place of release to the time and place of withdrawal for use as human drinking water.

(3) **"Hazardous waste"** means non-exempt waste that exceeds the minimum standards for waste hazardous by characteristics established in RCRA regulations, 40 CFR 261.21-261.24, or listed hazardous waste as defined in 40 CFR, part 261, subpart D, as amended.

(4) **"HDPE"** means high-density polyethylene.

(5) **"High gas-oil ratio proration unit"** means a unit with at least one producing oil well with a gas-oil ratio exceeding the limiting gas-oil ratio for the pool in which the unit is located.

(6) **"H₂S"** means hydrogen sulfide.

I. Definitions beginning with the letter "I".

(1) **"Illegal gas"** means gas produced from a gas well exceeding the division-determined allowable.

(2) **"Illegal oil"** means oil produced exceeding the allowable the division fixes.

(3) **"Illegal product"** means a product of illegal gas or illegal oil.

(4) **"Inactive well"** means a well that is not being used for beneficial purposes such as production, injection or monitoring and that is not being drilled, completed, repaired or worked over.

(5) **"Injection well"** means a well used for the injection of air, gas, water or other fluids into an underground stratum.

J. Definitions beginning with the letter "J". [RESERVED]

K. Definitions beginning with the letter "K". **"Knowingly and willfully"**, for assessing civil penalties, means the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The conduct's knowing and willful nature may be established by plain indifference to or reckless disregard of the requirements of statutes, rules, orders or permits. A consistent pattern or performance or failure to perform also may be sufficient to establish the conduct's knowing and willful nature, where such consistent pattern is neither the result of honest mistakes nor mere inadvertency. Conduct that is otherwise regarded as being knowing and willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

L. Definitions beginning with the letter "L".

(1) **"Limiting gas-oil ratio"** means the gas-oil ratio the division assigns to a particular oil pool to limit the volumes of casinghead gas that may be produced from the various oil producing units within that particular pool.

(2) **"Liner"** means a continuous, low-permeability layer constructed of natural or human-made materials that restricts the migration of liquid oil field wastes, gases or leachate.

(3) **"LLDPE"** means linear low-density polyethylene.

(4) **"Load oil"** means oil or liquid hydrocarbon that has been used in remedial operation in an oil or gas well.

(5) **"Log"** means a systematic detailed and correct record of formations encountered in drilling a well.

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M. Definitions beginning with the letter "M".

(1) **"Marginal unit"** means a proration unit that is incapable of producing top proration unit allowable for the pool in which it is located.

(2) **"Marginal well"** means an oil or gas well that produced less than 180 days and less than 1,000 barrels of oil equivalent within a consecutive 12 month period.

(2)(3) **"Market demand percentage factor"** means that percentage factor of one hundred percent or less as the division determines at an oil allowable hearing, which, when multiplied by the depth bracket allowable applicable to each pool, determines that pool's top proration unit allowable.

(3)(4) **"MCF"** means 1000 cubic feet.

(4)(5) **"MCFD"** means 1000 cubic feet per day.

(5)(6) **"MCFGPD"** means 1000 cubic feet of gas per day.

(6)(7) **"Measured depth"** means the total length of the well bore.

(7)(8) **"Mg/l"** means milligrams per liter.

(8)(9) **"Mg/kg"** means milligrams per kilogram.

(9)(10) **"Mineral estate"** is the most complete ownership of oil and gas recognized in law and includes the mineral interests and the royalty interests.

(10)(11) **"Mineral interest owner"** means a working interest owner, or an owner of a right to explore for and develop oil and gas that is not subject to an existing oil and gas lease.

(11)(12) **"Minimum allowable"** means the minimum amount of production from an oil or gas well that may be advisable from time to time to the end that production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

(12)(13) **"Miscellaneous hydrocarbons"** means tank bottoms occurring at pipeline stations; oil storage terminals or refineries; pipeline break oil; catchings collected in traps, drips or scrubbers by gasoline plant operators in the plants or in the gathering lines serving the plants; the catchings collected in private, community or commercial salt water disposal systems; or other liquid hydrocarbon that is not lease crude or condensate.

N. Definitions beginning with the letter "N".

(1) **"Non-aqueous phase liquid"** means an interstitial body of liquid oil, petroleum product, petrochemical or organic solvent, including an emulsion containing such material.

(2) **"Non-exempt waste"** means oil field waste not exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(3) **"Non-hazardous waste"** means non-exempt oil field waste that is not hazardous waste.

(4) **"Non-marginal unit"** means a proration unit that can produce the top proration unit allowable for the pool in which it is located, and to which the division assigns a top proration unit allowable.

(5) **"NORM"** means the naturally occurring radioactive materials regulated by 20.3.14 NMAC.

O. Definitions beginning with the letter "O".

(1) **"Official gas-oil ratio test"** means the periodic gas-oil ratio test the operator performs pursuant to division order by the method and in the manner the division prescribes.

(2) **"Oil"** means petroleum hydrocarbon produced from a well in the liquid phase and that existed in a liquid phase in the reservoir. This definition includes crude oil or crude petroleum oil.

(3) **"Oil field waste"** means non-domestic waste resulting from the exploration, development, production or storage of oil or gas pursuant to Paragraph (21) of Subsection B of Section 70-2-12 NMSA 1978 and the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil pursuant to Paragraph (22) of Subsection B of Section 70-2-12 NMSA 1978, including waste generated from oil field remediation or abatement activity regardless of the date of release. Oil field waste does not include waste not generally associated with oil and gas industry operations such as tires, appliances or ordinary garbage or refuse unless generated at a division-regulated facility, and does not include sewage, regardless of the source.

(4) **"Oil well"** means a well capable of producing oil and that is not a gas well as defined in Paragraph (6) of Subsection G of 19.15.2.7 NMAC.

(5) **"Operator"** means a person who, duly authorized, manages a lease's development or a producing property's operation, or who manages a facility's operation.

(6) **"Overproduction"** means the amount of oil or gas produced during a proration period exceeding the amount authorized on the proration schedule.

(7) **"Owner"** means the person who has the right to drill into and to produce from a pool, and to appropriate the production either for the person or for the person and another.

P. Definitions beginning with the letter "P".

(1) **"Penalized unit"** means a proration unit to which, because of an excessive gas-oil ratio,

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the division assigns an allowable that is less than top proration unit allowable for the pool in which it is located and also less than the ability of the well or wells on the unit to produce.

(2) **“Person”** means an individual or entity including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or an agency, department or instrumentality of the United States and of its officers, agents or employees.

(3) **“Pit”** means a surface or sub-surface impoundment, man-made or natural depression or diked area on the surface. Excluded from this definition are berms constructed around tanks or other facilities solely for safety, secondary containment and storm water or run-on control.

(4) **“Playa lake”** means a level or nearly level area that occupies the lowest part of a completely closed basin and that is covered with water at irregular intervals, forming a temporary lake.

(5) **“Pool”** means an underground reservoir containing a common accumulation of oil or gas. Each zone of a general structure, which zone is completely separated from other zones in the structure, is covered by the word pool as used in 19.15.2 NMAC through 19.15.39 NMAC. “Pool” is synonymous with “common source of supply” and with “common reservoir”.

(6) **“Potential”** means a well’s properly determined capacity to produce oil or gas under division-prescribed conditions.

(7) **“Ppm”** means parts per million by volume.

(8) **“PQL”** means practical quantitation limit.

(9) **“Pressure maintenance”** means the injection of gas or other fluid into a reservoir, either to maintain the reservoir’s existing pressure or to retard the reservoir pressure’s natural decline.

(10) **“Produced water”** means a fluid that is an incidental byproduct from drilling for or the production of oil and gas.

(11) **“Producer”** means the owner of a well or wells capable of producing oil or gas or both in paying quantities.

(12) **“Product”** means a commodity or thing made or manufactured from oil or gas, and derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzene, wash oil, lubricating oil and blends or mixtures of oil or gas or a derivative thereof.

(13) **“Proration day”** consists of 24 consecutive hours that begin at 7:00 a.m. and end at 7:00 a.m. on the following day.

(14) **“Proration month”** means the calendar month that begins at 7:00 a.m. on the first day of the month and ends at 7:00 a.m. on the first day of the next succeeding month.

(15) **“Proration period”** means for oil the proration month and for gas the 12-month period that begins at 7:00 a.m. on January 1 of each year and ends at 7:00 a.m. on January 1 of the succeeding year or other period designated by general or special order of the division.

(16) **“Proration schedule”** means the division orders authorizing the production, purchase and transportation of oil, casinghead gas and gas from the various units of oil or of gas in allocated pools.

(17) **“Proration unit”** means the area in a pool that can be effectively and efficiently drained by one well as determined by the division or commission (see Subsection B of Section 70-2-17 NMSA 1978) as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool.

(18) **“Prospective spacing unit”** means a hypothetical spacing unit that does not yet have a producing well.

(19) **“PVC”** means poly vinyl chloride.

(20) **“Psi”** means pounds per square inch.

Q. Definitions beginning with the letter “Q”. [RESERVED]

R. Definitions beginning with the letter “R”.

(1) **“RCRA”** means the federal Resource Recovery and Conservation Act.

(2) **“Recomplete”** means the subsequent completion of a well in a different pool from the pool in which it was originally completed.

(3) **“Regulated NORM”** means NORM contained in oil-field soils, equipment, sludges or other materials related to oil-field operations or processes exceeding the radiation levels specified in 20.3.14.1403 NMAC.

(4) **“Release”** means breaks, leaks, spills, releases, fires or blowouts involving oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and gases to the environment.

(5) **“Remediation plan”** means a written description of a program to address unauthorized

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releases. The plan may include appropriate information, including assessment data, health risk demonstrations and corrective action or actions. The plan may also include an alternative proposing no action beyond the spill report's submittal.

(6) **“Responsible person”** means the owner or operator who shall complete a division-approved corrective action for pollution from releases.

(7) **“Rules”** means the rules enacted pursuant to the Oil and Gas Act, 19.15.2 to 19.15.39 NMAC, as they may be modified or amended.

(8) **“Royalty interest owner”** means the owner of an interest in oil and gas that does not presently entitle the owner to explore, drill or otherwise develop those minerals, including lessors, royalty interest owners and overriding royalty interest owners. Royalty interests are non-cost bearing.

(9) **“Run-on”** means rainwater, leachate or other liquid that drains from other land onto any part of a division-approved facility.

S. Definitions beginning with the letter “S”.

(1) **“SAR”** means the sodium adsorption ratio.

(2) **“Secondary recovery”** means a method of recovering quantities of oil or gas from a reservoir which quantities would not be recoverable by ordinary primary depletion methods.

(3) **“Sediment oil”** means tank bottoms and other accumulations of liquid hydrocarbons on an oil and gas lease, which hydrocarbons are not merchantable through normal channels.

(4) **“Shallow pool”** means a pool that has a depth range from zero to 5000 feet.

(5) **“Shut-in”** means the status of a production well or an injection well that is temporarily closed, whether by closing a valve or disconnection or other physical means.

(6) **“Shut-in pressure”** means the gauge pressure noted at the wellhead when the well is completely shut-in, not to be confused with bottom hole pressure.

(7) **“Significant modification of an abatement plan”** means a change in the abatement technology used excluding design and operational parameters, or relocation of twenty-five percent or more of the compliance sampling stations, for a single medium, as designated pursuant to Subparagraph (d) of Paragraph (2) of Subsection D of 19.15.30.13 NMAC.

(8) **“Soil”** means earth, sediments or other unconsolidated accumulations of solid particles produced by the physical and chemical disintegration of rocks, and that may or may not contain organic matter.

(9) **“Spacing unit”** means the area allocated to a well under a well spacing order or rule. Under the Oil and Gas Act, Paragraph (10) of Subsection B of Section 70-2-12 NMSA 1978, the commission may fix spacing units without first creating proration units. See *Rutter & Wilbanks corp. v. oil conservation comm’n*, 87 NM 286 (1975). This is the area designated on form C-102.

(10) **“Subsurface water”** means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or that vegetation may use.

(11) **“Surface waste management facility”** means a facility that receives oil field waste for collection, disposal, evaporation, remediation, reclamation, treatment or storage except:

(a) a facility that utilizes underground injection wells subject to division regulation pursuant to the federal Safe Drinking Water Act, and does not manage oil field wastes on the ground in pits, ponds, below-grade tanks or land application units;

(b) a facility permitted pursuant to the New Mexico environmental improvement board rules or WQCC rules;

(c) a temporary pit as defined in 19.15.17 NMAC;

(d) a below-grade tank or pit that receives oil field waste from a single well, permitted pursuant to 19.15.37 NMAC, regardless of the capacity or volume of oil field waste received;

(e) a facility located at an oil and gas production facility and used for temporary storage of oil field waste generated on-site from normal operations, if the facility does not pose a threat to fresh water, public health, safety or the environment;

(f) a remediation conducted in accordance with a division-approved abatement plan pursuant to 19.15.30 NMAC, a corrective action pursuant to 19.15.29 NMAC or a corrective action of a non-reportable release;

(g) a facility operating pursuant to a division emergency order;

(h) a site or facility where the operator is conducting emergency response operations to abate an immediate threat to fresh water, public health, safety or the environment or as the division has specifically directed or approved; or

(i) a facility that receives only exempt oil field waste, receives less than 50 barrels of liquid water per day (averaged over a 30-day period), has a capacity to hold 500 barrels of liquids or less and is permitted pursuant to 19.15.17 NMAC.

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T. Definitions beginning with the letter "T".

(1) **"Tank bottoms"** means that accumulation of hydrocarbon material and other substances that settles naturally below oil in tanks and receptacles that are used in oil's handling and storing, and which accumulation contains more than two percent of BS&W; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet to the tank.

(2) **"TDS"** means total dissolved solids.

~~(3) **"Temporary abandonment" or "temporarily abandoned status"** means the status of a well that is inactive.~~

~~(4)~~**(3)** **"Top proration unit allowable for gas"** means the maximum number of cubic feet of gas, for the proration period, the division allocates to a gas producing unit in an allocated gas pool.

~~(5)~~**(4)** **"Top proration unit allowable for oil"** means the maximum number of barrels for oil daily for each calendar month the division allocates on a proration unit basis in a pool to non-marginal units. The division shall determine the top proration unit allowable for a pool by multiplying the applicable depth bracket allowable by the market demand percentage factor in effect.

~~(6)~~**(5)** **"TPH"** means total petroleum hydrocarbons.

~~(7)~~**(6)** **"Treating plant"** means a plant constructed for wholly or partially or being used wholly or partially for reclaiming, treating, processing or in any manner making tank bottoms or other waste oil marketable.

~~(8)~~**(7)** **"Tribal lands"** means those lands for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe. This includes reservations, pueblo land grants, tribal trust lands and individual trust allotments.

~~(9)~~**(8)** **"Tribal leases"** means those leases of minerals or interests in or rights to minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

~~(10)~~**(9)** **"Tribal minerals"** means those minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

~~(11)~~**(10)** **"True vertical depth"** means the difference in elevation between the ground level at the surface location of the well and the deepest point in the well bore.

~~(12)~~**(11)** **"Tubingless completion"** means a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

~~(13)~~**(12)** **"Tubingless multiple completion"** means completion in which two or more common sources of supply are produced through an equal number of casing strings cemented in a common well bore, each such string of casing having an outside diameter of 2.875 inches or less, with the production from each common source of supply completely segregated by cement.

U. Definitions beginning with the letter "U".

(1) **"Underground source of drinking water"** means an aquifer that supplies water for human consumption or that contains ground water having a TDS concentration of 10,000 mg/l or less and that is not an exempted aquifer.

(2) **"Underproduction"** means the amount of oil or the amount of gas during a proration period by which a given proration unit failed to produce an amount equal to that the division authorizes in the proration schedule.

(3) **"Unit of proration for gas"** consists of such multiples of 40 acres as may be prescribed by division-issued special pool orders.

(4) **"Unit of proration for oil"** consists of one 40-acre tract or such multiples of 40-acre tracts as may be prescribed by division-issued special pool orders.

(5) **"Unorthodox well location"** means a location that does not conform to the spacing requirements division rules establish.

(6) **"Unstable area"** means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all a division-approved facility's structural components. Examples of unstable areas are areas of poor foundation conditions, areas susceptible to mass earth movements and karst terrain areas where karst topography is developed because of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features of karst terrain include sinkholes, sinking streams, caves, large springs and blind valleys.

(7) **"Upstream facility"** means a facility or operation associated with the exploration, development, production or storage of oil or gas that is not a downstream facility.

V. **Definitions beginning with the letter "V".** **"Vadose zone"** means unsaturated earth material below the land surface and above ground water, or in between bodies of ground water.

W. Definitions beginning with the letter "W".

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(1) **“Waste”**, in addition to its ordinary meaning, includes:

(a) underground waste as those words are generally understood in the oil and gas business, and to embrace the inefficient, excessive or improper use or dissipation of the reservoir energy, including gas energy and water drive, of a pool, and the locating, spacing, drilling, equipping, operating or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recovered from a pool, and the use of inefficient underground storage of gas;

(b) surface waste as those words are generally understood in the oil and gas business, and to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas of any type or in any form, or oil, or a product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of oil or gas, in excess of the reasonable market demand;

(c) oil production in this state in excess of the reasonable market demand for the oil; the excess production causes or results in waste that the Oil and Gas Act prohibits; reasonable market demand as used herein with respect to oil means the demand for the oil, for reasonable current requirements for current consumption and use within or outside of the state, together with the demand of amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of oil or the products thereof, or both the oil and products;

(d) the non-ratable purchase or taking of oil in this state; the non-ratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b) and (c) of Paragraph (1) of Subsection W of 19.15.2.7 NMAC and causes waste by violating the Oil and Gas Act, Section 70-2-16 NMSA 1978;

(e) the production in this state of gas from a gas well or wells, or from a gas pool, in excess of the reasonable market demand from such source for gas of the type produced or in excess of the capacity of gas transportation facilities for such type of gas; the words “reasonable market demand”, as used herein with respect to gas, shall be construed to mean the demand for gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of gas or products thereof, or both the gas and products.

(2) **“Water”** means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

(3) **“Water contaminant”** means a substance that could alter if released or spilled water’s physical, chemical, biological or radiological qualities. Water contaminant does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(4) **“Watercourse”** means a river, creek, arroyo, canyon, draw or wash or other channel having definite banks and bed with visible evidence of the occasional flow of water.

(5) **“Water pollution”** means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or property use.

(6) **“Well blowout”** means a loss of control over and subsequent eruption of a drilling or workover well or the rupture of the casing, casinghead or wellhead of an oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquid, from the well.

(7) **“Well bore”** means the interior surface of a cased or open hole through which drilling, production or injection operations are conducted.

(8) **“Wellhead protection area”** means the area within 200 horizontal feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas does not include areas around water wells drilled after an existing oil or gas waste storage, treatment or disposal site was established.

(9) **“Wetlands”** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. This definition does not include constructed wetlands used for wastewater treatment purposes.

(10) **“Working interest owner”** means the owner of an operating interest under an oil and gas lease who has the exclusive right to exploit the oil and gas minerals. Working interests are cost bearing.

(11) **“WQCC”** means the New Mexico water quality control commission.

[19.15.2.7 NMAC - Rp, 19.15.1.7 NMAC, 12/1/2008; A, 3/31/2015; A, 6/30/2016; A, 6/26/2018; A, 1/15/2019; A, 10/13/2020; A, 8/23/2022]

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19.15.2.8 GENERAL OPERATIONS/WASTE PROHIBITED:

A. The production or handling of oil or gas of any type or in any form or the handling of oil or gas products in a manner, under conditions or in an amount as to constitute or result in waste is prohibited.

B. Operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, treating plant operators or other persons shall conduct their operations in or related to the drilling, equipping, operating, producing, plugging and abandonment of oil, gas, injection, disposal and storage wells or other facilities in a manner that prevents waste of oil and gas, the contamination of fresh waters and shall not wastefully utilize oil or gas or allow either to leak or escape from a natural reservoir or from wells, tanks, containers, pipe or other storage, conduit or operating equipment.
[19.15.2.8 NMAC - Rp, 19.15.1.13 NMAC, 12/1/2008]

19.15.2.9 ORDERS: The division or commission may issue orders, including division or commission special pool orders when required and the orders shall prevail against rules if in conflict with them.
[19.15.2.9 NMAC - Rp, 19.15.1.11 NMAC, 12/1/2008]

19.15.2.10 ONLINE APPLICATION AND SUBMITTALS:

A. The division shall establish online application and submittal procedures on the division's website for the electronic filing of all forms, applications and other written documents and information with the division.

B. All applications that require the payment of a fee, as provided in Section 70-2-39 NMSA 1978, shall include the fee payment with the application.

C. A person whose filing is made untimely due to a technical failure of the division's web-based online application process may request an extension of time. Technical failures not originating with the division's process, such as problems with the filer's equipment, software, or telecommunications facility will not constitute a basis for relief.

[19.15.2.10 NMAC - N, 8/23/2022]

19.15.2.11 EMERGENCY ORDERS AND RULES:

A. Notwithstanding other provisions of 19.15.2 NMAC through 19.15.39 NMAC, in the event the division or commission finds an emergency exists that requires an order's or rule's issuance without a hearing, the emergency rule or order shall have the same validity as if the division or commission held a hearing before the division or commission after due notice. The emergency rule or order shall remain in force no longer than 15 days from its effective date.

B. Notwithstanding other provisions of 19.15.2 NMAC through 19.15.39 NMAC, if the division or commission finds an emergency exists, the division or commission may conduct a hearing on an application within less than 30 days after party files an application and the director may set the notice period at the director's discretion.

[19.15.2.11 NMAC - Rp, 19.15.14.1225 NMAC, 12/1/2008]

19.15.2.12 FILING AND NOTIFICATION: All requirements in the rules:

A. to file a form or application with the division or commission, including documents required to be filed with district offices or the Santa Fe office, shall be accomplished by using the applicable online process on the division's website,

B. to otherwise notify, advise, contact, or report to the division, including to any unit of the division (such as a bureau or office) or any division official (such as the director or a bureau chief), may be accomplished by electronic mail or as otherwise provided on the division's website; the division shall provide contact instructions on the division's website, and

C. to file an original financial assurance instrument with the division as provided in 19.15.8 NMAC shall require delivery to the Santa Fe office unless otherwise directed by the division.

[19.15.2.12 NMAC - Rp, 19.15.15.1304 NMAC, 12/1/2008; 19.15.2.12 NMAC - Rp, 19.15.2.12 NMAC, 8/23/2022]

19.15.2.13 COMPUTATION OF TIME: In computing a period of time prescribed by the Oil and Gas Act, the rules or an order, the division and commission shall comply with the Uniform Statute and Rule Construction Act, Section 12-2A-7 NMSA 1978.

[19.15.2.13 NMAC - Rp, 19.15.14.1226 NMAC, 12/1/2008; A, 8/23/2022]

19.15.2.14 MEETINGS BY TELECONFERENCE: Pursuant to Section 10-15-1 NMSA 1978, commission members may participate in commission meetings and hearings by conference telephone or other 19.15.2 NMAC

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similar communications equipment when it is otherwise difficult or impossible for members to attend the meeting or hearing in person. Each member participating by conference telephone or other similar communications equipment shall be identified when speaking. Participants shall be able to hear each other at the same time. Members of the public hearing attending the meetings or hearing shall be able to hear commission members who speak during the meeting or hearing.

[19.15.2.14 NMAC - Rp, 19.15.1.20 NMAC, 12/1/2008]

19.15.2.15 AUTHORITY TO COOPERATE WITH OTHER AGENCIES: The division may from time to time enter into arrangements with state and federal governmental agencies, industry committees and individuals with respect to special projects, services and studies relating to oil and gas conservation and the associated protection of fresh waters.

[19.15.2.15 NMAC - Rp, 19.15.1.17 NMAC, 12/1/2008]

19.15.2.16 DUTIES AND AUTHORITY OF DIVISION PERSONNEL: Division personnel have the authority and duty to enforce division rules. Upon a showing by an operator that changes are necessary to avoid waste or protect public health or the environment, division personnel may allow minor deviations from approved field operational plans such as drilling and plugging plans. The operator shall file a Form C-103 as a notice of intention showing the change of plans within two business days of the approval.

[19.15.2.16 NMAC - Rp, 19.15.15.1303, 12/1/2008; A, 8/23/2022]

19.15.2.17 ORGANIZATIONAL UNITS: When necessary to assist in the administration of the Oil and Gas Act, the director may divide the state into districts or other organizational units as appropriate. Upon establishment of, or revisions to, such units, the director shall provide or amend a map on the division's website with the boundaries of the units. Contact information for the units, including any assigned personnel, shall be maintained on the division's website.

[19.15.2.17 NMAC - Rp, 19.15.15.1301 NMAC, 12/1/2008; 19.15.2.17 NMAC - Rp, 19.15.2.17 NMAC, 8/23/2022]

19.15.2.18 RENUMBERING OR REORGANIZATION OF RULES: When the commission approves reorganization or renumbering of division rules, either through amendment or repeal and replacement, persons with permits, orders or agreements that reference rules that have been reorganized or renumbered shall comply with the rules as reorganized or renumbered.

[19.15.2.18 NMAC - N, 12/1/2008]

HISTORY of 19.15.2 NMAC:

History of Repealed Material: 19.15.1 NMAC, General Provisions (filed 04/27/2001); 19.15.14 NMAC, Procedure (filed 09/16/2005); and 19.15.15 NMAC, Administration (filed 07/12/2004) all repealed 12/1/2008.

NMAC History:

Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 1-7, 11, 13, 17, & 20) (filed 04/27/2001); 19.15.14 NMAC, Procedure (Sections 1225 and 1226) (filed 09/16/2005); and 19.15.15 NMAC, Administration (Sections 1301 and 1303) (filed 07/12/2004) were replaced by 19.15.2 NMAC, General Provisions for Oil and Gas Operations, effective 12/1/2008.

EXHIBIT A-2

APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.8 NMAC

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

19.15.8.1 ISSUING AGENCY: Oil Conservation Commission.

[19.15.8.1 NMAC - N, 12/1/2008; A, 1/15/2019]

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, 12/1/2008]

19.15.8.3 STATUTORY AUTHORITY: 19.15.8 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, Section 70-2-12 and Section 70-2-14 NMSA 1978.

[19.15.8.3 NMAC - N, 12/1/2008; A, 1/15/2019]

19.15.8.4 DURATION: Permanent.

[19.15.8.4 NMAC - N, 12/1/2008]

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, 12/1/2008]

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, 12/1/2008]

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, 12/1/2008; A, 6/30/2015]

19.15.8.9 CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. **Applicability.** An operator who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well within this state shall furnish a financial assurance acceptable to the division in accordance with 19.15.8.9 NMAC and 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 commission rules, unless the well is covered by federally required financial assurance. The division shall not approve, and the operator shall not proceed with any proposed drilling or acquisition until the operator has furnished the required financial assurance.

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. **Active wells.** An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC and are not subject to Subsections D and E of 19.15.8.9 NMAC in one of the following categories:

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(1) a one well plugging financial assurance in the amount of \$150,000 per well; ~~\$25,000-~~ plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells; or

(2) a blanket plugging financial assurance in the amount of \$250,000 following amounts covering all the wells of the operator subject to Subsection C of 19.15.8.9 NMAC:

- (a) ~~———— \$50,000 for one to 10 wells;~~
- (b) ~~———— \$75,000 for 11 to 50 wells;~~
- (c) ~~———— \$125,000 for 51 to 100 wells; and~~
- (d) ~~———— \$250,000 for more than 100 wells.~~

D. Marginal wells and inactive wells. Notwithstanding the provisions in Subsection C(2) in this Section:

(1) As of the [effective date of amendments] a transferee operator shall provide a one well plugging financial assurance of \$150,000 for each marginal well prior to transfer.

(2) Beginning January 1, 2028, an operator shall provide a one well plugging financial assurance for each marginal well.

(3) An operator with 15 percent or more of their wells in marginal or inactive well status, or a combination thereof, shall provide a one well plugging financial assurance in the amount of \$150,000 for each well registered to the operator until the percentage of the operator's marginal and inactive wells is decreased below 15 percent.

(4) An operator may furnish all necessary one well plugging financial assurance in the form of a single instrument.

E.D. Inactive wells and wells in approved and expired temporarily abandoned status. An operator shall provide financial assurance for wells that are inactive and wells in approved and expired temporarily abandoned status, ~~covered by Subsection A of 19.15.8.9 NMAC that have been in temporarily abandoned status for more than two years~~ or for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories:

(1) a one well plugging financial assurance in the amount of \$150,000 per well; ~~\$25,000-~~ plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells; or

(2) a blanket plugging financial assurance equal to an average of \$150,000 per well covering all wells of the operator subject to Subsection ~~E.D~~ of 19.15.8.9 NMAC:

- (e) ~~———— \$150,000 for one to five wells;~~
- (f) ~~———— \$300,000 for six to 10 wells;~~
- (g) ~~———— \$500,000 for 11 to 25 wells; and~~
- (h) ~~———— \$1,000,000 for more than 25 wells.~~

F.D. Operators who have on file with the division a blanket plugging financial assurance that does not cover additional wells shall file additional one single well plugging bond financial assurance for any wells not covered by the existing blanket plugging financial assurance bond in an amount as determined by Section 19.15.8.9 NMAC, subject to any limitations in Section 70-2-14 NMSA 1978, ~~or, in the alternative, may file a replacement blanket bond.~~

G. On January 1, 2028 and on January 1 of each successive year, the division may adjust the financial assurance amounts provided by Subsections C(1), D, E and F of this Section by multiplying the financial assurance as of January 1, 2027 by a fraction, the numerator of which is the consumer price index ending in September of the previous year and the denominator of which is the consumer price index ending September 2026; provided that any financial assurance shall not be adjusted below the minimum amounts required in Subsections C(1), D, E and F of this Section as a result of a decrease in the consumer price index. By November 1, 2027 and by November 1 of each successive year, the division shall post on its website the financial assurance requirements in Subsection A through E of this Section for the next year. As used in this subsection, "consumer price index" means the consumer price index, not seasonally adjusted, for all urban consumers, United States city average for all items, or its successor index, as published by the United States department of labor for a 12 month period ending September 30.

[19.15.8.9 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015; A, 1/15/2019]

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. The surety shall be listed on U.S. department of the treasury circular 570.

B. The operator shall deposit cash representing the full amount of the bond in an account in a

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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, 12/1/2008; A, 6/30/2015]

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 letter of credit's terms and conditions.

[19.15.8.11 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015]

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 and is otherwise in compliance with the requirements of 19.15.5.9 NMAC and 19.15.9.9 NMAC.

[19.15.8.12 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008]

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 Subsection E of Section 70-2-14 NMSA 1978.

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, 12/1/2008]

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.

C. The 2018 amendments to 19.15.8.9 NMAC apply to applications for permits to drill, deepen or plug back and applications for approved temporary abandonment filed on or after January 15, 2019, and for all other 19.15.8 NMAC

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wells on April 15, 2019.

[19.15.8.14 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 1/15/2019]

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.

19.15.8.16 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, 6/30/2015]

19.15.8.17 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, 6/30/2015]

HISTORY of 19.15.8 NMAC:

History of Repealed Material: 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/2008.

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 12/1/2008.