



Clayton Sporich: Surrebuttal NMOGA Legal Expert

Surrebuttal Testimony in OCC Case No. 24683 | October-November 2025

Applicants' Subsequent Changes to the Proposed Rules

19.15.8.9(A) NMAC – Applicability of Financial Assurance Rulemaking

Exhibit 88

Received by OCD: 10/30/2025

3 of 8

19.15.8.9 CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. **Applicability.** An operator who has drilled or acquired **operating authority**, is drilling or proposes to drill or acquire **operating authority of 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 of operating authority until the operator has furnished the required financial assurance.

- NMOGA still opposes the proposal to amend 19.15.8.9(A)
- NMOGA preserved its objection this modification is untimely
- “Operating authority” is not defined and must be defined if included here
 - Because such a vague term, it can arguably apply to wells subject to a JOA or compulsory pooling applications
- OCD grants “operating authority” when it designates an operator in a compulsory pooling order
 - How this is drafted, it would require an applicant to obtain a bond at or shortly thereafter the OCD designation, **before a well actually is drilled and “liability” created**
- Does this exempt full acquisitions? Extend to JOAs?
 - For a JOA, that is a private contract where parties agree to who is going to operate a project.
 - In my reading, this provision would authorize the OCD to review JOAs to determine whether an operator has acquired operating authority.
 - OCC/OCD does not have the authority to adjudicate private contracts. Nor can I imagine they want to.
- Trades and lease swaps happen so often and are under time constraints in oil and gas industry

19.15.8.9(F) NMAC – Incomplete Assurance *Applicants' Exhibit 72-C*

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 financial assurance in the form of a single instrument. ~~replacement blanket bond.~~

- Framed as creating blanket bond alternative for incomplete financial assurance
- But since other changes to 19.15.8.9 NMAC still apply, blanket bond for inactive or TA'd wells not covered by existing assurance must still total to an average of \$150K per well
- **So still no blanket bond alternative for inactive and approved, pending, and expired TA'd wells under this provision**

EXTRATERRITORIAL COMPLIANCE CERTIFICATION

Received by OCD: 10/30/2025

5 of 8

19.15.9.8 NMAC – Operator Registration *Applicants' Exhibit 72-D*

19.15.9.8 OPERATOR REGISTRATION:

A. Prior to commencing operations, an operator of a well or wells in New Mexico shall register with the division as an operator. Applicants shall provide the following to the financial assurance administrator in the division's Santa Fe office:

- (1) an oil and gas registration identification (OGRID) number obtained from the division, the state land office or the taxation and revenue department;
- (2) a current address of record to be used for notice and a current emergency contact name and telephone number for each district in which the operator operates wells; and
- (3) the financial assurance 19.15.8 NMAC requires.

B. Prior to commencing operations, an operator shall provide to the division a certification by an authorized official officer, director, or partner that the new operator is not subject to any forfeiture demands from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and does not have unresolved adjudicated orders or unresolved settlement agreements for any state or federal violations in compliance with federal and state oil and gas laws and regulations in any domestic jurisdiction each state in which the new operator does business; a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC.

B.C. The division may deny registration as an operator if:

- (1) the applicant is not in compliance with Subsection A of 19.15.5.9 NMAC;
- (2) the applicant has forfeiture demands from any state or federal agency, has forfeited financial assurance to any state or federal agency, or has unresolved adjudicated orders or unresolved settlement agreements for any state or federal violation is out of compliance with federal and state oil and gas laws and regulations in any domestic jurisdiction each state in which the applicant does business;

NMOGA still opposes entirely, even with modified language, but if considered:

- Should only consider New Mexico, not others states of federal law
- Any certification should only require disclosure of forfeited demands and forfeited FA, if anything
 - Would this apply to all unresolved adjudicative orders and settlement agreements?
 - What if adjudicative orders and settlement agreements have been appealed or compliance efforts are ongoing?
 - At the very least, strike settlement agreements
- Who is an “authorized official”?
 - Through SLO cross-examination of WELC’s legal expert Mr. Morgan, term is apparently designed to encompass manager and member-managed LLCs – why not just say that?
 - Term should be defined, if adopted

A. A change of operator occurs when the entity responsible for a well or a group of wells changes. A change of operator may result from a sale, assignment by a court, a change in operating agreement or other transaction. Under a change of operator, wells are moved from the OGRID number of the operator of record with the division to the new operator's OGRID number.

B. The operator of record with the division and the new operator shall apply for a change of operator by jointly filing a form C-145 using the division's web-based online application. If the operator of record with the division is unavailable, the new operator shall apply to the division for approval of change of operator without a joint application. The new operator shall make such application in writing and provide documentary evidence of the applicant's right to assume operations: a certification by an authorized official officer, director, or partner of the new operator that the new operator is not subject to any forfeiture demands from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and does not have unresolved adjudicated orders or unresolved settlement agreements for any state or federal violations in compliance with federal and state oil and gas laws and regulations in any domestic jurisdiction each state in which the new operator does business; a plugging and abandonment plan; a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC. The new operator shall not commence operations until the division approves the application for change of operator. The plugging and abandonment plan shall be certified by an authorized representative officer, director, or partner of the new operator and shall demonstrate that the new operator has and will have the financial ability to meet the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells to be transferred in light of all the operator's assets and liabilities. The division may request the operator to provide additional information including corporate credit rating, corporate financial statements, long-term liabilities, reserves and economics report, records of the operator's historical costs for decommissioning activities, estimate of the operator's decommissioning obligations, and history of inactive wells and returning wells to production.

C. The director of the director's designee may deny a change of operator if:

(1) the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC; or

(2) ~~the new operator is acquiring wells, facilities or sites subject to a compliance order requiring remediation or abatement of contamination, or compliance with 19.15.25.8 NMAC, and the new operator has not entered into an agreed compliance order setting a schedule for compliance with the existing order.~~

(2) the new operator has forfeiture demands from any state or federal agency, has forfeited financial assurance to any state or federal agency, or has unresolved adjudicated orders or unresolved settlement agreements for any state or federal violations is out of compliance with federal and state oil and gas laws and

Received by OCD: 10/30/2025

6 of 8

19.15.9.9 NMAC – Change of Operator

- Same concerns and recommendations as previous slide
- Otherwise, can be used to deny operator changes, which would inhibit transfers of assets

Presumptions of No Beneficial Use

19.15.25.9 NMAC

19.15.25.9 PRESUMPTIONS OF NO BENEFICIAL USE:

A. For oil and gas production wells, there is a rebuttable presumption that a well is not capable of beneficial use if, in a consecutive 12 month period, the well has not produced for at least 90 days and has not produced at least 90 barrels of oil equivalent.

B. For injection or salt water disposal wells, there is a rebuttable presumption that a well is not capable of beneficial use if, in a consecutive 12 month period, the well has not injected at least 90 days and at least 100 barrels of fluid.

C. The rebuttable presumptions in this Section do not apply to wells that have been drilled but not completed for less than 18 months and wells that have been completed but have not produced for less than 18 months.

D. Within 30 calendar days after notice of a preliminary determination from the division that a well or wells are not being used for beneficial purposes, a well operator may submit an application for administrative review of such determination through the division's electronic permitting portal. The division shall issue a final determination based on the application, and information available in division records, and any information requested by the division. The final determination may be appealed pursuant to 19.15.4 NMAC. Applications shall to demonstrate beneficial use of a well or wells and the operator shall provide any information requested by the division. Such documentation may shall include:

(1) Documentation demonstrating that the well is reasonably projected to produce in paying quantities; and

(2) Documentation demonstrating that the operator maintains adequate capitalization or reasonably projected revenue sufficient to meet all reasonably anticipated plugging and environmental liabilities of the well or wells and associated production facilities, not inclusive of any financial assurance associated with the well or wells; and

(3) Other relevant information requested by the division including a A plugging and abandonment plan as described in 19.15.9.9.B NMAC; and

(4) Other relevant information requested by the division.

- Presumption makes operators guilty until proven innocent
- The procedure to rebut the presumption of no beneficial use is in subparagraph (D)
- It should mirror the body of the provision 19.15.25.9 NMAC
- Change other instance of “shall” to “may” – as was done for one reference to “shall” already



BEATTY & WOZNIAK

ENERGY IN THE LAW

Miguel Suazo | Shareholder
Santa Fe, New Mexico