STATE OF NEW MEXICO
NEW MEXICO 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**

APPLICANTS' NOTICE OF FILING CLOSING ARGUMENT AND PROPOSED STATEMENT OF REASONS

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, Sierra Club, and WildEarth Guardians (collectively, "Applicants") file their Closing Argument and Proposed Statement of Reasons along with their final proposed amendments, reflected in **Applicants' Exhibits 89 and 90**.

Applicants and the Oil Conservation Division ("OCD") significantly revised their proposals as a result of post-hearing negotiations with the Independent Petroleum Association of New Mexico ("IPANM"), New Mexico Oil and Gas Association ("NMOGA"), and OXY USA, Inc. ("OXY"). Revisions to Applicants and OCD's final proposed amendments from Applicants' proposed revised amendments (Exhibit 72), as a result of negotiations are highlighted in blue (and the yellow highlight represents changes negotiated with OXY pre-hearing) and are set forth in **Applicants' Exhibit 89**. A "clean" copy of Applicants' final proposed amendments, without highlighting and strikeouts from previous versions, is attached as **Applicants' Exhibit 90**.

As a result of negotiations:

- Applicants and OCD revised their proposals to address many of industry's concerns.
- The State Land Office supports the entirety of Applicants and OCD's final proposed amendments.
- OXY supports the entirety of Applicants and OCD's final proposed amendments with two minor exceptions.
- IPANM and NMOGA have agreed not to challenge the negotiated revisions based on substantial evidence. However, despite significant changes to accommodate

industry, IPANM and NMOGA nonetheless do not support any of Applicants and OCD's final proposed amendments.

The revised, negotiated proposals reflect a carefully crafted "package" in which the proposals are connected and interdependent. Applicants and OCD's final proposed amendments propose strong rules to address the orphan well crisis New Mexico faces, protect public health and the environment, address many industry concerns, and are implementable by OCD. The final proposals should be adopted as a whole.

For the convenience of the Oil Conservation Commission, Applicants uploaded a complete set of exhibits to the shared WELC folder in the ENMRD CentreStack platform for this proceeding. The complete set includes their direct, rebuttal, and surrebuttal exhibits and their final proposed amendments. *See* Applicants' Notice of Filing Complete Set of Exhibits.

Respectfully submitted,

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Certificate of Service

I certify that on April 3, 2026, I served by a copy of this pleading to the following via email:

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APPLICANTS' CLOSING ARGUMENT AND PROPOSED STATEMENT OF REASONS

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PRELIMINARY STATEMENT

The central purpose of Applicants' proposed amendments is to prevent the further proliferation of orphan wells in the state, and thereby to prevent associated costs from being passed on to the state and to avoid potential harms to New Mexico communities and the environment from unplugged wells. Unplugged wells emit air pollutants including methane, a potent greenhouse gas driving climate change, and hazardous air pollutants known or suspected to cause cancer, reproductive diseases, and birth defects. Leaking wells pollute ground and surface water. Communities likely to be exposed to pollutants from unplugged wells include historically marginalized groups, including communities in northwest New Mexico.

New Mexico faces an orphan well crisis. In June 2025, the New Mexico Legislative Finance Committee ("LFC") issued a report on orphan wells. *See* Apps' Ex. 4. According to LFC, the Oil Conservation Division ("OCD") has plugging authority for approximately 700 wells, the state will likely need to plug an additional 1,400 inactive wells, and more than 3,000 low producing wells are at risk of being orphaned. LFC estimates the state's current and near-future liability for plugging and remediation is **$700 million to $1.6 billion**. This is not a liability that should be thrust upon the state; it's a liability that should be borne by industry.

The increased orphaning of wells results from gaps in the current regulatory program. Prior to filing their Application, Applicants worked with OCD and the State Land Office ("SLO") to craft rules to fill those gaps. After filing, Applicants adopted significant proposals offered by OCD.

While Applicants endeavored to negotiate with industry parties after filing their Application, only OXY USA, Inc. ("OXY") would come to the table. As a result, Applicants and OCD negotiated changes to their proposals with OXY. *See* Apps' Ex. 72 [revised proposals].

Applicants enlisted national experts to support their proposals and presented a fact-based, data driven case before the Oil Conservation Commission ("OCC"). OCD witnesses provided testimony based on their years of regulatory experience and OCD-collected industry data.

While industry witnesses roundly objected to Applicants and OCD's proposals, by and large they did not offer hard data to support their positions, did not dispute Applicants' data, and did not offer alternative policy proposals to address the looming orphan well crisis.

During hearing, the OCC encouraged the parties to negotiate. Applicants, OCD, Independent Petroleum Association of New Mexico ("IPANM"), New Mexico Oil and Gas Association ("NMOGA"), and OXY came to the table and worked in good faith for four months.

As a result, Applicants and OCD significantly revised many proposals to address industry concerns while still maintaining strong policy prescriptions to tackle the orphan well problem. SLO supports all proposals in full. OXY supports all proposals with two minor exceptions. While differences with IPANM and NMOGA have been narrowed, unfortunately neither party supports any of Applicants and OCD's final proposals. *See* Joint Stipulation (Mar. 20, 2026).

Applicants and OCD's final proposed amendments are reflected in Applicants' Exhibits 89 and 90, attached. Applicants and OCD worked hard to address industry concerns. **The compromises they made represent carefully crafted accommodations that fit together as a whole and constitute a "package" that the OCC should adopt in full.** The final product represents nation-leading rules that will stem the orphan well crisis, better protect communities and the environment, meet many industry concerns, and are implementable by OCD.

CLOSING ARGUMENT

I. APPLICABLE LEGAL STANDARD

OCC rules will be set aside only if (1) arbitrary, capricious or an abuse of discretion, (2)

not supported by substantial evidence in the record, or (3) not in accordance with law. NMSA 1978, § 70-2-12.2(C).

II. SUBSTANTIAL EVIDENCE SUPPORTS APPLICANTS' PROPOSALS

All amendments offered by Applicants and OCD are supported by substantial evidence, as set forth in detail in Applicants' Proposed Statement of Reasons.

Because IPANM and NMOGA presented little or nothing by way of alternate proposals during hearing, there is little or no evidence to support alternate proposals they make in closing.

III. INDUSTRY'S LEGAL CHALLENGES HAVE NO MERIT

A. Applicants' Proposals at 19.15.8.9 NMAC Are Consistent with the Act's Authorization to Establish Categories of Financial Assurance

The Oil and Gas Act ("Act") requires operators to furnish FA to plug and abandon ("P&A") their wells and expressly provides that the OCC "**shall establish categories of financial assurance** after notice and hearing." NMSA 1978, § 70-2-14(A) (emphasis added). To establish such categories, the Act directs OCC to "consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and such other factors as the oil conservation division deems relevant." *Id.*

In addition to requiring OCC establish FA categories, the Act identifies categories for OCC rule, which are: "a blanket plugging financial assurance" no greater than $250,000; a blanket plugging FA for temporarily abandoned ("TA") wells no less than $50,000; "a one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells;" and a one well FA for wells held in TA more than two years. *Id.*

Applicants' proposed FA categories include all required categories, as mandated by the Act, and establish new categories, as authorized by the Act. Applicants' FA proposals are:

- **One well** plugging financial assurance of $150,000 or **blanket plugging financial**

assurance capped at $250,000 for active wells at 19.15.8.9.C(1) and (2) NMAC.

This proposal (1) complies with the Act's requirement for a "blanket plugging financial assurance" capped at $250,000 and (2) establishes an additional category of one well FA for active wells.

- **One well** plugging financial assurance of $150,000 for low producing wells at 19.15.8.9.D(1) and (2) NMAC, which may be furnished in a **"single instrument."**

This proposal establishes an additional category of one well FA for "low producing wells" (formerly "marginal wells"), which are wells that produce less than 1,000 barrels of oil equivalent ("BOE") and less than 180 days over 12 months. It does **not** establish a blanket bond.

- **One well** plugging financial assurance of $150,000 for all wells of an operator with 20% or more of their wells in inactive, approved TA, expired TA, or a combination thereof at 19.15.8.9.E(1) NMAC[1], which may be furnished in a **"single instrument."**

This proposal establishes an additional category of one well FA that applies to high risk portfolios. It does **not** establish a blanket bond.

- **One well** plugging financial assurance of $150,000 for all wells in inactive, approved TA, or expired TA or a blanket bond equal to an average of $150,000 per well at 19.15.8.9.F(1) and (2) NMAC.[2]

This proposal (1) complies with the Act's requirement for a blanket bond for TA wells no less than $50,000, (2) complies with the Act's requirement for one well FA for wells in TA more than two years, and (3) establishes an additional category of one well FA for inactive wells, wells in TA less than two years, and expired TA wells.

1. <u>Applicants' proposals do not violate the $250,000 blanket bond cap</u>

Applicants' proposal at 19.15.8.9.C(2) NMAC provides for "a blanket plugging financial assurance in the amount of $250,000" for all active wells (that are not low producing wells).

[1] Formerly proposed at 19.15.8.9.**D(3)** NMAC in Applicants' Exhibit 72-C.
[2] Formerly proposed at 19.15.8.9.**E(1) and (2)** NMAC in Applicants' Exhibit 72-C.

Applicants' proposal is similar in kind to OCC's current rules which authorize blanket bonds ranging from $50,000 to $250,000 for **active wells** depending on the number of an operators' wells. *See* [existing] 19.15.8.9.C(2) NMAC. Applicants' proposal for a $250,000 blanket bond fully complies with the Act's requirement to establish a category for "a blanket plugging financial assurance in the amount of $250,000."

Industry first argues that **all active wells** are subject to the statutory cap and therefore Applicants' proposal for single well FA for low producing wells, which are active wells, violates the cap. *E.g.,* Sporich Reb. Test. at 11-12; OXY Prehrg. Stmt. at 4-5. However, the Act does **not** by its express language or otherwise apply the blanket bond cap to **all active wells**. In fact, the Act makes **no distinction** between active and inactive wells for purposes of the blanket bond cap. *See* NMSA 1978, § 70-2-14(A). There is simply no requirement in the Act that all active wells be subject to the blanket bond cap, including low producing wells.

Exercising its discretion under the Act, the OCC has applied the cap only to active wells. In addition, the OCC has authorized a new category for one well FA for active wells based in part on well depth. *See* [existing] 19.15.8.9.C(1) NMAC. The one well FA for active wells is not a required category but is authorized as a category for active wells the OCC may establish.

Similarly, Applicants' proposal for one well FA for low producing wells is not a category required under the Act but is authorized as a category for active wells that the OCC may establish. In support of that category, Applicants and OCD produced an abundance of evidence that low producing wells are at high risk for abandonment and should be bonded at an "amount[] determined sufficient to reasonably pay the cost of plugging the wells," as required for single well bonding under the Act. Apps' Ex. 30 at 0739-40 [Purvis Dir. Test.][3]; Apps' Ex. 15 at 0331-

[3] Page numbers for Applicants' exhibits refer to the Bates stamped numbers on the exhibits.

34 [Morgan Dir. Test.]; Apps' Ex. 57 at 0880-91 [Peltz Dir. Test.]; Apps' Ex. 74 at 1069-72 [Purvis Reb. Test.]; 10/24/25 Tr. 214:9 to 216:1. To establish different categories, the OCC may take into consideration "factors [it] deems relevant." NMSA 1978, § 70-2-14(A). The risk to the State is a legitimate factor for consideration.

Second, industry argues that Applicants' proposal for low producing wells and the portfolio FA proposal violate the blanket bond cap because operators are authorized to provide one well FA for multiple wells in a "single instrument," claiming a "single instrument" is the equivalent of a "blanket bond." Sporich Reb. Test. at 10-11. It is not. For the administrative convenience of operators and OCD, one well FA covering many wells may be submitted in the "form of a single instrument." This is not a **not** a "blanket bond." A blanket bond covers all of an operator's wells within a single category (*e.g.*, all an operator's active wells). A single instrument is intended to provide administrative convenience by allowing an operator to satisfy multiple FA obligations (*e.g.* single well FAs and blanket bonds) with a single FA instrument.

Third, industry argues Applicants' proposal at 19.15.8.9.F(1) NMAC, requiring one well FA for wells in TA less than two years, violates the blanket bond cap. Sporich Reb. Test. at 10. Industry argues "the statute **mandates** that wells in a 'temporarily abandoned' status will remain under the $250,000 blanket financial assurance coverage for an initial two-year period." *Id.* (emphasis added). While it's true the Act requires one well FA for wells in TA more than two years, it is emphatically not true the Act **mandates** wells in TA less than two years be subject to the $250,000 blanket bond cap, expressly or impliedly. The OCC is authorized to establish FA requirements for wells in TA less than two years, including one well FA for such wells.

2. Applicants' proposals do not violate the one well FA requirement for wells in TA more than two years

Related to the last argument, industry argues that Applicants' proposed FA for low

producing wells at 19.15.8.9.D NMAC and for inactive/approved TA/expired TA wells at 19.15.8.9.F NMAC runs afoul of the Act's requirement that wells in TA more than two years have one well FA. Industry claims the Act authorizes OCC to establish one well FA **only** for wells held in TA more than two years. OXY Prehrg. Stmnt. at 6.

But the Act does no such thing. The Act authorizes the OCC to establish different FA categories **and** to establish one well FA that covers the cost of plugging. Both these provisions authorize one well FA for additional categories, in addition to the one well FA required for wells in TA more than two years. There is no language—express or implied—that limits one well FA to wells in TA more than two years. Nor is there any statutory language that prohibits the OCC from establishing one well FA for wells in TA less than two years or establishing one well FA for other categories of wells, such as low producing wells.

Applicants produced significant expert testimony and data substantiating that non-producing wells—including wells in TA for any amount of time—are at greatest risk of orphaning because they generate no revenue to cover plugging and remediation obligations, while at the same time incurring maintenance and administrative costs. *See, e.g.*, Apps' Ex. 15 at 0337-45; Apps' Ex. 30 at 0756-57; Apps' Ex. 57 at 0892-99. As with low producing wells, the risk of orphaning is an appropriate factor to consider in establishing one well FA for wells in TA.

3. Applicants' proposed well categories comply with the Act's requirements for setting financial assurance amounts

NMOGA argues Applicants' proposed $150,000 one well FA amount "disregards" the factors the OCC must consider when establishing FA categories and the requirement that one well FA be "sufficient to reasonably pay the cost of plugging the wells." Sporich Reb. Test. at 5-6. Specifically, NMOGA argues Applicants' proposal to remove the $25,000 base amount plus $2 per foot of well depth cost from the existing one well FA provisions "contravenes §70-2-

14(A) and exceeds OCD's statutory authority." *Id.*

NMOGA misses the mark, again. Applicants produced substantial evidence the $150,000 one well FA amount is based on the statutory factors—and more. Apps' Ex. 15 at 0329. Applicants proposed $150,000 based on the average cost to OCD to plug which, as discussed below, is $163,000. Apps' Ex. 4 at 0117. Basing one well FA on OCD's actual average cost of plugging inherently incorporates the factors the OCC must consider—including the depth of a well, the length of time since a well produced, and the cost of plugging similar wells—because these factors all contribute to OCD's actual costs. Apps' Ex. 81 at 1142 [Morgan Reb. Test.].

NMOGA's claim that removing the express well depth component from the existing FA rules for active wells contravenes the Act is wrong. The Act only requires the OCC **consider** well depth in establishing categories of FA; it does not mandate a specific formula based on depth upon which FA must be set. Applicants and OCD presented substantial evidence that well depth is not a reliable indicator of the cost to plug well. 10/24/25 Tr. 226:2-7, 232:8 to 233:23; Apps' Ex. 74 at 1066-69. Industry did not present credible evidence to the contrary.

Moreover, OCC may consider "other factors [it] deems relevant." OCD staff testified that a well's downhole condition is a major factor in plugging costs and, by the time OCD plugs an orphan well, years of operator neglect typically caused the well's downhole condition to deteriorate significantly. OCD Ex. 13 at 0005; OCD Ex. 4 at 0003; 10/24/25 Tr. 211:25 to 213:7. According to OCD Deputy Director Brandon Powell, well depth is not a "driving factor." 10/24/25 Tr. 233:22-25.

Finally, NMOGA's arguments that the $150,000 FA amount is not reasonable and that industry costs to plug should be relied upon are unavailing. Sporich Reb. Test. at 5-7. The cost to operators is beside the point because FA will only be called upon if an operator orphans a well

that **OCD must pay for and plug**. Apps' Ex. 81 at 1155; OCD Ex. 30 at 2. Only OCD costs are relevant. Even Mr. Sporich conceded this during cross-examination. 10/30/25 Tr. 311:14-25. As Deputy Director Powell put it, operator costs and OCD costs are comparing "apples to oranges." 10/27/25 Tr. 202:8 to 204:1. Applicants produced substantial evidence that $150,000 reflects OCD's average cost to plug. *See, e.g.,* Apps' Ex. 15 at 0314-17, 0328-29. Indeed, LFC reports OCD's average cost to plug a single orphaned well is $163,000, Apps' Ex. 4 at 0117, rendering $150,000 a reasonable—even low—approximation of OCD's cost of plugging wells.

While industry objected to Applicants and OCD's one well FA of $150,000, **no** industry witness offered specific FA proposals supported by data or modeling. Any one well FA amount proposed by industry should be rejected for lack of substantial evidence in support.

B. Applicants' Proposals Do Not Run Afoul of the Act's Goal to Prevent Waste

IPANM and NMOGA witnesses claim Applicants' proposals for FA, presumption of no beneficial use ("PNBU"), and TA will cause "premature" plugging of wells, resulting in "waste" of the resource in violation of the Act's goal to prevent waste. *E.g.*, NMOGA Ex. C at 13-14 [Arthur Dir. Test.]; Arscott Dir. Test. at 6, 13; *see* NMSA 1978, §§ 70-2-2, -11.

Industry's claims have no merit. First, industry witnesses supplied no data, calculations, or estimates to support their generalized arguments. No hard evidence backs their claims.

Second, none of Applicants' proposals for PNBU or TA will result in "premature" plugging. For each of Applicants' PNBU and TA proposals, an operator has full opportunity to demonstrate that a well has beneficial use and can continue producing the well or place it in TA.

Third, Applicants' FA proposals – which increase bonding for high risk wells and high risk portfolios – nowhere require an operator to plug a well. Increasing bonding for these wells better reflects the actual costs to OCD to P&A and is necessary to stem the tide of orphaned

wells. If an operator is financially unable to internalize legitimate costs of doing business, the operator can transfer the well to a viable operator who can.

Indeed, this is what has occurred elsewhere. Industry's predictions of "premature" plugging are contrary to actual outcomes from studies analyzing the impacts of increased bonding in Texas and North Dakota, which found no meaningful decrease in production after those states increased bonding. Apps' Ex. 30 at 0732-33. There, operators impacted by increased bonding accounted for a small fraction of overall production, and production associated with operators exiting the market was reallocated to other producers, not shut down. *Id.*

Relatedly, well economics factor into operators' decisions to stop producing a well, plug the well, and **leave hydrocarbons in the ground**. Operators do not consider this "waste." While IPANM witness Calder Ezzell claimed "zero waste" is allowed under the Act, 1/4/25 Tr. 40:22-25, he walked back that claim during cross-examination, acknowledging that no operator produces a well to the very last hydrocarbon. According to Mr. Ezzell, each operator can decide when to stop production and leave the resource in the ground based on their own economic calculus. 11/4/25 Tr. 46:13-24. Part of that calculus includes the costs of doing business, which includes bonding for P&A.

Fourth, Applicants' proposed rules are conservatively tailored to minimize impact to statewide production. For example, Applicants' expert, Dwayne Purvis, P.E., modeled the extent to which wells in New Mexico would be categorized as low producing wells subject to single well FA. He found 3,900 wells would qualify, representing 6.6% of the statewide well population and only **0.048% of total state production**. Apps' Ex. 40.

Finally, orphan wells **cause** waste. Over 60% of the orphaned wells plugged by OCD cause waste by leaking natural gas. 10/24/25 Tr. 214:4-10; OCD Ex. 13 at 0004 [Powell Dir.

Test.]. This finding aligns with U.S. Environmental Protection Agency estimates that an average low or non-producing oil well leaks 1.8 tons of methane into the atmosphere each year. Apps' Ex. 15 at 0308-09. Even wells in approved TA that have met mechanical integrity testing requirements in OCC rules can nonetheless emit and leak natural gas because equipment can fail over time. Apps' Ex. 3 at 0091-92 [Alexander Dir. Test.].

In sum, industry witnesses' claims that Applicants' proposals result in waste were unsubstantiated and should be rejected.

C. OCC Has Authority to Regulate Operator Registration and Change of Operator

NMOGA and IPANM assert that the OCC lacks legal authority to regulate registration of operators and change of operators as proposed by Applicants at 19.15.9 NMAC. *E.g.,* NMOGA Ex. E at 36-37 [Sporich Dir. Test.]. However, the OCC has broad plenary authority under the Act to "make and enforce rules . . . reasonably necessary to carry out the purpose of this act, **whether or not indicated or specified in any section thereof**." NMSA 1978, § 70-2-11 (emphasis added). Applicants' proposed changes to operator registration and change of operator requirements are reasonably necessary to protect the State against high risk, noncompliant operators that may walk away from their plugging obligations. In fact, the OCC has **already** exercised this authority: the existing rules authorize OCD to deny operator registrations and change of operator based on an operator's noncompliance. *See* [existing] 19.15.9.8.B(1)-(3) NMAC; 19.15.9.9.C, -D NMAC. The proposed amendments are no different in kind than OCC rules that have been in place since 2008, almost two decades.

PROPOSED STATEMENT OF REASONS

I. PROCEDURAL BACKGROUND

1. On June 24, 2024, Applicants filed their Application for Rulemaking.

2. On August 15, 2024, the OCC voted to proceed with the rulemaking. 8/15/24 Tr. 102:18 to 103:24.

3. On September 23, 2024, with concurrence of all parties, the OCC scheduled the hearing to begin April 14, 2025. 9/23/24 Tr. 5:23 to 6:8, 10:4-9.

4. At Applicants' initiation, the parties notified the OCC on February 20, 2025 they agreed to reschedule the hearing to consider amendments proposed by OCD. Apps' Ex. 6 [correspondence among counsel] at 0234; 2/20/25 Tr. 8:16 to 9:12. On April 7, 2025, with concurrence of all parties, the OCC rescheduled the hearing to begin October 20, 2025. 7/7/25 Tr. 24:25 to 25:2.

5. On April 25, 2025, Applicants filed their Revised Application for Rulemaking.

6. All notice requirements for the hearing were met, including publication of notice of the rulemaking in the New Mexico Register. NM Register, vol. XXXVI, issue 10 (May 20, 2025); OCC's Certificate of Compliance with Notice Requirements (Aug. 7, 2025).

7. The following parties entered appearances: EOG Resources, Inc., IPANM, New Energy Economy, NMOGA, Nick Maxwell, OCD, OXY, and SLO.

8. As required by various orders of the Hearing Officer, parties filed Prehearing Statements with direct testimony and exhibits on August 8, 2025, and rebuttal testimony and exhibits on September 19, 2025.

9. The hearing was held October 20-24, October 27-31, and November 3-6, 2025, with Hearing Officer Felicia Orth presiding.

10. Opportunity for public comment was provided on October 20, 2025 at 4:00 pm and each day thereafter at 9:00 am and 4:00 pm. A Spanish interpreter was available on October 20, 21, 27, and November 3, 2025.

II. PARTIES' ENGAGEMENT

11. Prior to filing the Application, Applicants' counsel and experts met with OCD and SLO staff to discuss Applicants' proposals. Apps' Ex. 3 at 0061.

12. Prior to filing, Applicants' counsel reached out to NMOGA and IPANM to inform them they would file an application for rulemaking and wanted to work with them. *Id.*

13. After filing, Applicants' counsel worked to meet with OCD and industry counsel. The parties scheduled four meetings in October 2024, but just prior to the meetings, industry counsel said they could only attend the first meeting, which was not substantive.

14. At a second meeting, OCD staff said they were working on redline proposals to present prior to year's end. OCD didn't provide proposals until February 2025, and invited all parties to discuss the proposals. Only Applicants' counsel agreed to meet. *Id.*

15. NMOGA witness Andrea Felix, Vice-President of NMOGA Regulatory Affairs, testified NMOGA didn't engage in negotiations with Applicants' counsel in fall 2024 because it was waiting for OCD's proposals. However, Ms. Felix admitted that NMOGA did not engage in discussions with OCD or Applicants after OCD put forth its proposals in February 2025. 10/31/25 Tr. 119:13 to 120:16, 123:19 to 124.:11, 127:11 to 128:7.

16. After OCD sent its proposals, Applicants' counsel and their experts met with OCD staff, and Applicants adopted major OCD proposals including for "marginal wells," operator level FA, and PNBU. Apps' Ex. 3 at 0061-62.

17. OXY responded to overtures from Applicants' counsel, and counsel for both parties met during the summer 2024 and again in July 2025. In August 2025, Applicants' and OCD met with OXY. As a result, the parties reached agreement on a number of provisions reflected yellow highlight in Applicants' Exhibit 72. Apps' Ex. 3 at 0062.

18. As a result of Applicants' work with OCD and SLO, Applicants and OCD's amendments proposed at hearing were essentially the same, and SLO "strongly support[ed]" all amendments. Compare Apps' Exs. 1, 72 [Apps' proposals and revised proposals] and OCD's Ex. 15 [Powell PowerPoint]; OCD PHS at 1 ("OCD supports the Revised Petition"); SLO PHS at 1.

19. During the hearing, OCC members encouraged the parties to negotiate to try to reach common ground and narrow differences. As requested, beginning in November 2025 and continuing through February 2026, Applicants' and OCD counsel began meeting regularly with NMOGA, IPANM, and OXY counsel and representatives. According to the parties, the discussions and negotiations were substantive and constructive. 1/15/26 OCC Tr. 14:12 to 24:15; Joint Stipulation (filed Mar. 20, 2026).[4]

20. As a result, Applicants and OCD revised their proposals significantly to address industry concerns. Revisions to Applicants' and OCD's proposals as a result of negotiations are highlighted in blue in Applicants' Exhibit 89. SLO supports all such proposals. OXY supports all such proposals with two minor exceptions.

21. IPANM and NMOGA generally agreed not to challenge the changes based on substantial evidence but, despite the substantial changes agreed to by Applicants and OCD, they do not support any of the final proposed amendments and reserve all other challenges. Industry's positions on Applicants' final proposals are outlined in the parties' Joint Stipulation.

22. The revisions agreed to by Applicants and OCD represent a carefully crafted, integrated "package" that Applicants request the OCC to adopt as a whole.

[4] SLO was informed of the negotiations but did not participate. Applicants' counsel kept SLO counsel informed of the status of the negotiations.

III. APPLICANTS' EXPERTS AND DATA

A. Thomas Alexander

23. Tom Alexander worked in the oil and gas industry for 35 years and now has a consulting firm, Alexander Engineering, Inc., where he focusses on oil and gas operations. After serving in the U.S. Air Force, he began his career in oil and gas in 1981 with Schlumberger Offshore running open hole logging operations. He then worked for four small operators -- in the East Texas Basin, Denver-Julesburg Basin, Arkoma Basin in Arkansas, and Arkoma Basin in Oklahoma – where he focused on field operations and engineering, including drilling, completion, production and reserve evaluation. See Apps' Ex. 3 at 0043-50.

24. In 1999, he began work with Southwestern Energy ("SWN"), serving in production and completion; became Team Lead for the Fayetteville Shale exploration and development until he was promoted to General Manager SWN Canada to lead the exploration in New Brunswick; and ended his service with SWN in 2016 as a Vice President managing the Health, Safety and Environment Division. He has extensive experience determining when to plug inactive and unproductive oil and gas wells and remediating well sites. *Id.*

25. As a consultant to the Environmental Defense Fund ("EDF"), he served as an expert before the OCC in the 2021 Methane Waste Rule hearing and before the Environmental Improvement Board in the 2022 Ozone Precursor Rule hearing. *Id.*

26. He has Bachelor of Arts in Psychology from Wake Forest University and a Bachelor and Master of Science, Mining Engineering from South Dakota School of Mines and Technology. *Id.*; Apps' Ex. 2 [Alexander Resume].

B. Dwayne Purvis, P.E.

27. Dwayne Purvis, P.E., is Principal Advisor of consulting firm Purvis Energy

Advisors which he founded in 2015. He has a bachelor's degree in petroleum engineering from Texas A&M University and a master's degree in sustainable energy from Johns Hopkins University's school of public policy. He is a registered professional engineer in Texas. Apps' Ex. 29 [Purvis CV] at 0689-91.

28. Mr. Purvis has worked as a petroleum reservoir engineer for 30 years, mostly as a consultant but also for private oil companies, and has performed reservoir engineering work on fields all over the United States and abroad. He has certified reserves as an independent third-party evaluator, prepared and presented expert testimony on reserves and value, and evaluated reserves, purchases, and sales for internal company use. He has worked in conventional fields since 1995 and shale fields since 2003. *Id.*

29. He has taught petroleum engineering and reserves evaluation for the American Association of Petroleum Landmen and the energy MBA program at Texas Christian University. He has written technical papers on late-life oil and gas economics, and the Society of Petroleum Engineers asked him to present that work in its Distinguished Lecturer program. He has published studies of late-life, state-level oil and gas economics in California, Colorado, Ohio, Pennsylvania, West Virginia, and parts of Wyoming. *Id.*

30. A list of his technical publications, articles, media appearances, and presentations is set forth in his curriculum vitae. See Apps' Ex. 29.

C. <u>Peter Morgan, J.D.</u>

31. Peter Morgan is Legal and Policy Director for the Center for Asset Retirement Accountability ("CARA"), which he co-founded. CARA addresses the national problem of unplugged oil and gas wells, including through regulatory solutions. He has a B.A. from Middlebury College, a J.D. from Stanford Law School, and a M.S. from Stanford' Emmet

Interdisciplinary Program in Environment and Resources. Apps' Ex. 15 at 0289-90.

32. Prior to CARA, Mr. Morgan worked for 16 years as an attorney for the Sierra Club, where he focused on the operation and cleanup of fossil fuel extraction facilities nationwide, with a concentration on oil and gas operations and coal mines. He has expertise analyzing state and federal regulatory requirements for FA from oil and gas operators for plugging and abandonment and site remediation and the fiscal, environmental, and public health problems resulting from orphaned and abandoned wells across the nation. *Id.*

33. He testified before the U.S. House of Representatives Natural Resources Committee Subcommittee on Energy and Mineral Resources on the need to improve regulations to strengthen FA, restrict transfer of obligations, and other issues related to cleaning up fossil fuel extraction sites, and has submitted multiple sets of comments to federal authorities including the U.S. Bureau of Land Management regarding best regulatory practices to ensure prompt cleanup of fossil fuel extraction infrastructure and avoid creating orphaned infrastructure. *Id.*; see also Apps' Ex. 14 [Morgan Resume].

D. Adam Peltz, J.D.

34. Adam Peltz is a director and senior attorney at EDF. He has a bachelor of arts in political science and international studies from the University of Chicago, and a master's degree in international relations and law degree from Boston University. Apps' Ex. 57 at 0841-43; see also Apps' Ex. 56 [Peltz Resume].

35. Since 2011, he has worked nationally on local environmental impacts of oil and gas development and has focused on focused on orphaned and abandoned wells since 2020. *Id.*

36. Working with Senators Luján of New Mexico and Cramer of North Dakota, the Interstate Oil and Gas Compact ("IOGCC"), and the Independent Petroleum Association of

America, helped formulate and pass the Revive Economic Growth and Reclaim Orphan Wells Act or REGROW Act, which provides $4.7 billion to states, Tribes and federal land management agencies to plug and remediate orphaned and abandoned wells across the U.S. The bill was adopted in the 2021 Infrastructure Investment and Jobs Act. New Mexico has received $55.5 million and is eligible to receive another $111.8 million. *Id.*

37. Mr. Peltz is involved in legislative or rulemaking activities on FA, idle well management, and well transfer in Louisiana, Texas, Oklahoma, and Utah, in addition to New Mexico, and serves on a National Academy of Science consensus study on orphan well plugging. When chair of the IOGCC's Energy Resources, Research and Technology Committee, he worked with the Society of Petroleum Engineers on a webinar series on issues relevant to state oil and gas regulators, including orphaned wells. *Id.*

38. Mr. Peltz participated in the complex stakeholder process initiated by the Energy, Minerals and Natural Resources Department in fall 2023/winter 2023-24 to reform the New Mexico Oil and Gas Act, and co-led the FA subgroup. LFC asked him to present on the orphan well problem in New Mexico in May 2025, which resulted LFC's June 24, 2025 Policy Spotlight: Orphaned Wells. Id; Apps' Ex. 4.

E. Applicants' Data-based Case

39. Applicants' experts developed a wealth of data to help inform the OCC about the trends in oil and gas development, operations, and production in New Mexico; the adequacy – or rather inadequacy – of the current bonding structure; the widespread extent of noncompliance of inactive wells; the impact of Applicants' proposals on operators; and much more. Applicants relied on solid, verifiable data to support their Revised Application, along with state government reports and peer-reviewed articles.

40. Industry parties did not seriously contest the validity of Applicants' data and generally supported their case with generalized allegations devoid of hard data.

IV. OVERVIEW OF ORPHAN WELL PROBLEM

41. The typical life cycle of a well, wells, or field begins with the initial completion, resulting in a well's highest level of production. With time, production declines and profitability falls to a point where an operator often elects for a variety of reasons to sell to another—often smaller and less resourced—operator. This cycle repeats itself until the well is held by an operator who lacks the resources to finalize operations and properly P&A the well. In that case, the state regulator ends up with that responsibility if the operator has walked off or gone bankrupt. Apps' Ex. 3 at 0057.

42. The orphan well problem is a pervasive national problem. In 2020, IOGCC tracked over 56,000 documented orphan wells in thirty states. Once states saw that the REGROW Act was likely to pass, they scrambled to document their orphan wells because their share of the $4.7 billion was predicated in part on their documented orphan well population and the count went up to 125,000. In the latest IOGCC report, the count is 141,000, and estimates of undocumented orphan wells range up to 800,000. Apps' Ex. 57 at 0849-50.

43. When a well reaches the end of its productive life, it needs to be properly sealed to prevent negative impacts on the surrounding environment and human health. Unplugged wells can have a host of disastrous consequences—they emit methane, a powerful greenhouse gas; can contaminate groundwater with toxic chemicals; and can negatively impact nearby communities' health and economy. *Id.* at 0847.

44. While New Mexico doesn't have a formal definition for "orphan well," generally orphan wells are non-producing, unplugged wells with no solvent responsible party able to pay

for plugging and remediation costs, and thus clean-up responsibility falls to the state. *Id.* at 0846. New Mexico, along with many other states, faces a growing population of orphan wells that are threatening the health of communities and the environment, as well as posing a massive economic burden on the state. This is because the problem of orphan wells often falls on the state to clean up. Thus, reforming New Mexico's rules is necessary. *Id.*

45. LFC's orphan well report is the state's most up-to-date, comprehensive analysis of the magnitude of the orphan well problem facing the state. LFC finds that,

> New Mexico has more than 60 thousand oil and gas wells that will eventually need to be plugged. Properly plugging and decommissioning those wells at the end of their productive lives is important to protect health and safety, the environment, and future resource development.

Id. at 0105.

46. LFC finds there are approximately 700 wells on state and private lands for which OCD has plugging authority; an additional 1,400 inactive wells likely to be orphaned; and more than low producing 3,000 wells at risk of being orphaned, for a total of 5,100 wells. *Id.*

47. NMOGA witness Harold McGowen testified that LFC's estimate for the 700 wells should be relied upon and acknowledged he had no better estimates than LCF for the other at-risk wells. 10/30/25 Tr. 84:2 to 87:12.

48. LFC estimates the existing orphan wells will cost the state $200 million and "the state's current and near-future liability for well plugging and site remediation is estimated at $700 million to $1.6 billion." Apps' Ex. 4 at 0105, 0119 (emphasis added).

49. Yet, OCD's Reclamation Fund held $66.7 million as of April 2025. *Id.* at 0115.

50. In light of these findings, LFC concludes:

> . . . it would be prudent for the state to reduce its future liability for orphaned wells, which could be accomplished through a variety of mechanisms, including revising its financial assurance system to incentivize operators to plug wells

before they become fully inactive.

Id. at 0105 (emphasis added).

51. As LFC observes, ". . . . many of the changes [in Applicants' Application] align with the recommendations of this report . . . ." *Id*. at 0136. These include LFC's recommendations to define "low producing wells," require single well FA for low producing wells, and strengthen well transfer requirements. *See id.* at 0106-07, 0141.

52. LFC was not the first state agency to sound the alarm. In 2021, the SLO commissioned two reports on the state's potential liability -- a Center for Applied Research, Inc. report identified a gap of over $8 billion between the total funds available through FA held by the state and the estimated total costs of well plugging and cleanup, Apps' Ex. 15 at 0316, and a Vertex Resources Services report that finds the total cost of decommissioning upstream infrastructure in 2021 and at 2021 prices was over $22 billion. Apps' Ex. 30 at 0705.

53. A stark example of the dangers posed by companies with a risky portfolio is Ridgeway Arizona Oil Corporation ("Ridgeway"). Ridgeway couldn't meet its plugging responsibility for 299 wells, leaving the state to take on a $30 million liability. In settlement, Ridgeway agreed to repay the state $30,000 per month. LFC estimates it will take Ridgeway 170 years to make the state whole, assuming Ridgeway meets its obligations over many decades—far from guaranteed. Apps' Ex. 3 at 0059-60; Apps' Ex. 4 at 0121; Apps' Ex. 57 at 0885.

54. Most states' regulations – including New Mexico's -- allow oil and gas operators to delay and avoid meeting their asset retirement obligations. Apps' Ex. 15 at 0292.

55. Current New Mexico rules contribute to the orphaned well crisis, first, by allowing operators to delay and avoid plugging by allowing wells to be placed in TA without any demonstration the wells have future beneficial use. Second, because current FA requirements are

set far below actual plugging costs, the rules do not provide incentive to operators to timely plug wells and the lack of adequate FA means that when wells are orphaned, essentially all plugging costs are borne by the state. Third, the rules facilitate and encourage transfer of inactive and low producing wells away from operators who profited from their earlier production and to under-resourced operators most likely to orphan those wells rather than plug them. *Id.* at 0294-95.

56. Due to unprecedented public scrutiny of orphan wells, state legislative and rulemaking activity has rapidly increased to address the orphan well epidemic and protect taxpayers, public health and safety, and local property values. The issue resonates with the public, who understand the imperative to require operators to clean up after themselves, and do not look kindly on how the richest industry in the world so frequently ignores its closure and remediation obligations. There is substantial public support, including bipartisan support, for holding oil and gas companies responsible for cleanup instead of taxpayers, as polling shows. Apps' Ex. 57 at 0851-52; Apps' Ex. 58 [Change Research polling].

57. Mr. Peltz details efforts other oil and gas producing states -- including Texas, Oklahoma, Utah, North Dakota, Wyoming, Colorado, California, Louisiana, and Arkansas -- are undertaking to reform their laws and rules to address orphan wells. See Apps' Ex. 57 at 0852-58.

58. There will never be a better time than now for New Mexico to strengthen its FA rules. The state is producing record amounts of oil and gas. Oil production has increased more than ten-fold from 66 million barrels in 2010 to 745 million barrels in 2024. All growth has come from newer wells while the share of older well production has shrunk dramatically. The vast majority of production now comes from wells spudded in the past five years, which means the entire large fleet of earlier-drilled wells is rapidly becoming unproductive and thus uneconomic – representing an increasingly large liability with increasingly less revenue to cover those costs.

According to Mr. Peltz, "It would be the paragon of irresponsibility to ignore the opportunity to secure legacy clean-up costs during this boom time." *Id.* at 0860-62; *id.* at 0860-69 (discussing historic and current New Mexico production, characteristics of wells to be plugged, and ability of operators to fund plugging); Apps' Ex. 59 [NM oil production 2010-24]; Apps' Ex. 60 [average depth of new wells]; Apps' Ex. 31 [NM plugged and unplugged wells]; Apps' Ex. 33 [history of daily production by basin]; Apps' Ex. 38 [holdback concept]; Apps' Ex. 39 [cost to plug orphan wells over time]; Apps' Ex. 57 at 0867 [EIA 2024 production tables].

V. APPLICANTS' PROPOSALS

A. Applicants' Proposed Amendments to 19.15.2 NMAC – General Provisions for Oil and Gas Operations

59. At 19.15.2.7.A(13) and -T(3) NMAC, Applicants propose to revise the definition of "approved temporary abandonment" to include "temporary abandonment" and temporarily abandoned status" and to delete the definition for the latter two terms:

19.15.2.7.A(13) "Approved temporary abandonment," "temporary abandonment," or "temporarily abandonment 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.

~~**19.15.2.7.T(3) "Temporary abandonment" or "temporarily abandoned status"** means the status of a well that is inactive.~~

60. The term "approved temporary abandonment," "temporary abandonment," and "temporarily abandonment status" are used interchangeably throughout the OCC rules to refer to wells that are authorized to be in TA and for which authorization has not expired.[5] There is no difference in their meaning. Additionally, the current definition for "temporary abandonment"

[5] *See, e.g.,* 19.15.8.9.D NMAC; 19.15.8.14.C NMAC; 19.15.7.14.A(1)(d), -B(2)(d) NMAC; 19.15.25.8.A, -B NMAC; 19.15.25.12 NMAC; 19.15.25.13.A-E NMAC; 19.15.25.14.A, -C, -E NMAC (using "approved temporary abandonment"); 19.15.7.14.E NMAC; 19.15.25.6 NMAC; 19.15.25.14.B(3) NMAC (using "temporary abandonment"); 19.15.8.9.D NMAC (using "temporarily abandoned status"); 19.15.39.10.B(8) NMAC (using "approved temporary abandonment status").

and "temporarily abandonment status" – which means "the status of the well is inactive" -- is not entirely accurate. Those wells are not only inactive (as defined in 19.15.2.7.I(4) NMAC) but they have also been approved under 19.15.25.13 NMAC to be placed in TA. It therefore makes sense to combine the definitions. Apps' Ex. 3 at 63.

61. Industry claimed combining the three terms "ignored important distinctions" among the terms and created "unnecessary duplication and confusion by collapsing two distinct regulatory concepts." *E.g.*, NMOGA Ex. D at 41-42 [McGowen Dir. Test.]. However, Mr. McGowen couldn't point to any place in the OCC's rules where the terms for "temporary abandonment" and "temporary abandoned status" are not used when referring to a well that's been in "approved" temporary abandonment status or where there was an actual conflict among the terms. 10/30/25 Tr. 81:18 to 82:5. Nor did industry witness written testimony identify any place in the OCC rules where there is an actual conflict. See NMOGA Ex. D at 41-42; NMOGA Ex. B at 40-43 [Felix Dir. Test.]; 10/30/25 Tr. 81:18 to 82:5. That's because there is no conflict among the three terms in the OCC's rules.

62. At 19.15.2.7.E(8) NMAC, Applicants propose new defined terms:

19.15.2.7.E(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.

63. Applicants propose to use these terms in their portfolio level FA at 19.15.8.9.E NMAC and in their one well FA proposals for non-producing wells at 19.15.8.9.F NMAC. Therefore, Applicants propose a definition for these new terms. Apps' Ex. 3 at 23.

64. These wells are defined as wells that had been approved for TA but do not qualify for that status because they no longer meet the OCC's regulatory requirements. Generally, these are wells for which the operator has not renewed TA status as required. *Id.*

65. Industry claimed the proposed definitions may conflict with other terms in the

OCC's rules. NMOGA Ex. D at 42-45; NMOGA Ex. B at 43-46. But, as Mr. McGowen acknowledged during cross-examination, the terms aren't used in the existing rules, and so there couldn't be a conflict. 10/30/25 Tr. 82:6 to 83:21. Nor did industry witness written testimony identify an actual conflict in OCC rules. See NMOGA Ex. D at 42-45; NMOGA Ex. B at 43-46.

66. At 19.15.2.7.B(5) NMAC, Applicants propose:

19.15.2.7.B(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.

67. Applicants propose a new definition for "barrel of oil equivalent" because that term is used in new proposals in 19.15.2.7.L(6) NMAC, defining "low producing well," and in 19.15.25.9 NMAC, setting forth criteria to establish "presumptions of no beneficial use." One "barrel of oil equivalent" is defined as 6,000 cubic feet of gas, which is the standard measurement to convert one barrel of oil to the equivalent volume of gas. This definition is in the Society of Petroleum Engineer's E&P Glossary. Apps' Ex. 3 at 64-65.

68. At 19.15.2.7.B(7) NMAC, Applicants propose new defined terms:

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

69. The OCC's rules currently use the terms "beneficial use" and "beneficial purposes,"[6] which are important terms, but there is no definition.

70. Applicants also propose using the term "beneficial use" in a new provision, 19.15.25.9 NMAC, which creates a PNBU for wells that, if not rebutted, require an operator to P&A a well. Applicants also use the term in proposed 19.15.25.13 NMAC requiring operators to demonstrate that wells have future "beneficial use" to be placed in TA status. Apps' Ex. 3 at 24.

71. The proposed definition is consistent with the current definition of "inactive well"

[6] *See, e.g.*, 19.15.2.7.I(4) NMAC; 19.15.25.8.B(2) NMAC; 19.15.25.12 NMAC.

a 19.15.2.7.I(4) NMAC, which is "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." *Id.* (emphasis added).

72. As a result of negotiations, Applicants propose two changes to their proposed definition. First, Applicants propose substituting "including" for "such as" to clarify the proposed definition does not exclude beneficial uses such as enhanced oil recovery and geothermal energy. While industry complained these uses were not included, *e.g.*, NMOGA Ex. D at 9-10, the proposed definition did not exclude such uses and the phrase "such as" is equivalent to "including." Apps' Ex. 73 at 989-90 [Alexander Reb. Test.].

73. Second, Applicants propose deleting the qualification that "beneficial use" does not include use for "speculative purposes." Industry objected to this language, and the qualification is not necessary for OCD to make an informed analysis of "beneficial use" under proposed 19.15.25.9 NMAC (PNBU) or 19.15.25.13 NMAC (approved TA). Both provisions require operators to make a detailed demonstration a well has present or future beneficial use.

74. In its Exhibit A, NMOGA offered a lengthy and limiting definition for "beneficial use" that is mostly regulatory, not definitional, in language; is unworkable; and is inconsistent in with Applicants' proposed criteria for PNBU wells (less than 90 BOE for production wells and less than 100 barrels for injection wells). Apps' Ex. 73 at 0996-98.

75. As a result of the negotiations, Applicants propose amending the existing definition of "inactive well" at 19.15.2.7.I(4) NMAC:

19.15.2.7.I(4) "Inactive well" means a well that has had no production or injection for 12 consecutive months or is not being used for beneficial purposes including ~~such as~~ production, injection or monitoring and that is not being drilled, completed, repaired or worked over.

76. Applicants propose substituting "including" for "such as" to conform to the same change in the definition of "beneficial use," and propose clarifying that an inactive well is one

that has had no production or injection for 12 consecutive months. This latter change is consistent with existing 19.15.25.8.B(3) NMAC, which requires a well to be plugged or placed in TA after "one year" of continuous inactivity. The proposed change still allows OCD to determine a well is inactive even if not continuously inactive for 12 months if it is not being used for "beneficial purposes."

77. During the hearing, there was discussion that the term "marginal well" should be renamed to avoid confusion with the term as it's used in other contexts. *E.g.*, 10/27/25 Tr. 162:9-17. During negotiations, all parties agreed to use "low producing well" as less confusing and a better reflection of the wells included in the category.

78. Applicants therefore propose deleting the term "marginal well" at 19.15.7.2.M(2) NMAC and throughout the rules and replacing it with "low producing well" at 19.15.7.2.L(6) NMAC:

19.15.7.2.L(6) "Low producing 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.

~~**19.15.7.2.M(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.~~

B. Applicants' Proposed Amendments to 19.15.5 NMAC – Enforcement and Compliance

79. Section 19.15.5.9.A NMAC sets forth criteria for a compliance determination for certain regulatory actions, which include OCD's determination whether to release FA under 19.15.8.12 NMAC, and approval or denial of operator registration and change of operator under 19.15.9.8.B-C NMAC. Apps' Ex. 15 at 0297.

80. Applicants propose the following amendments to 19.15.5.9.A NMAC:

19.15.5.9 COMPLIANCE

A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:

(1) currently meets the financial assurance requirements of 19.15.8 NMAC;

(2) is not subject to a division or OCC order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;

(3) does not have a penalty assessment that is unpaid more than 30 days after issuance of the order assessing the penalty; ~~and~~

(4) currently meets the requirements of 19.15.25.8 NMAC~~, and has no more than the following number of wells out of compliance with 19.15.25.8 NMAC that are not~~ or is subject to an agreed compliance or final order setting a schedule for bringing the wells into compliance with 19.15.25.8 NMAC and imposing sanctions if the schedule is not met; and ~~:~~

~~**(a)** two wells or fifty percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;~~

~~**(b)** five wells if the operator operates between 101 and 500 wells;~~

~~**(c)** seven wells if the operator operates between 501 and 1000 wells; and~~

~~**(d)** 10 wells if the operator operates more than 1000 wells.~~

(5) currently meets the requirements of 19.15.27.8.A to -D NMAC.

81. At 19.15.5.9.A(4) NMAC, Applicants propose striking the provisions allowing a certain number of wells to be **out of compliance** with the plugging requirements of 19.15.25.8 NMAC and still qualify for a **compliance determination** under 19.15.5.9.A NMAC. Under existing rule, an operator may have two to 10 wells out of compliance, depending on the number of wells the operator operates. The proposed amendment holds all operators to the requirement that they promptly plug their inactive wells or place the wells in TA. Apps' Ex. 15 at 0298-99.

82. This proposal prevents operators from gaming the system and allowing them to maintain wells out of compliance with plugging requirements. Under existing rule, the allowed noncompliance facilitates transfer of inactive wells with overdue plugging obligations. These wells are incapable of generating revenue and must be seen as pure liabilities. The proposed amendment disrupts such transfer by encouraging current operators to use the revenue generated by the wells' operation toward timely satisfying plugging obligations. Apps' Ex. 15 at 0299-0300. Moreover, wells that sit inactive for more than one year become less likely to return to production. However, allowing these noncompliant wells to remain inactive indefinitely creates risk of orphaning. Apps' Ex. 81 at 1135-36; OCD Ex. 15 at 11.

83. Industry objected to removing the compliance buffer as "punitive" for smaller operators and "problematic" for larger operators, claiming the compliance buffer offers "flexibility" for operations, where "minor noncompliance is often temporary and quickly

resolved." NMOGA Ex. B at 47. However, operators retain the option of entering approved TA if the well may be used in the future. Apps' Ex. 15 at 0299.

84. As part of negotiations, Applicants agreed in 19.15.5.9.A(4) NMAC to retain the language that exempts noncompliant wells that are subject to an "agreed compliance or final order." Those wells are under an order that carries sanctions if violated and therefore may properly count as compliant for purposes of OCD's compliance determination.

85. At 19.15.5.9.A(5) NMAC, Applicants propose to add compliance with 19.15.27.8.A to -D NMAC, which regulates venting and flaring, as a criterion for a compliance determination.[7]

86. The general prohibition against venting and flaring is a fundamental requirement and therefore should be part of any compliance determination. Prohibiting venting and flaring of methane prevents waste, a fundamental goal of the Act, and reduces emissions of one of the most potent greenhouse gases contributing to climate change. Moreover, noncompliance with 19.15.27.8.A to -D NMAC may also indicate a lack of capacity to properly operate and plug wells. Adding it as a criterion of compliance under 19.15.5.9.A NMAC enables OCD to address operational deficiencies and determine whether an operator has the resources to assume additional well operating and plugging obligations. Apps' Ex. 15 at 300-01; Apps' Ex. 81 at 1137-38.

87. Industry claimed the addition of this compliance criterion would be duplicative, rigid, and punitive. Sharp Dir. Test. at 6; Winchester Dir. Test. at 2-3; NMOGA Ex. C at 44-46.

[7] As a result of negotiations, Applicants proposed to add "to -D" to the proposed amendments at 19.15.5.9.A(5) NMAC, so that the reference is "19.15.27.8.A to -D NMAC." This addition merely **clarifies** that Subsections B to D are part of the compliance determination: by its express terms, Subsection A includes the requirements of Subsections B to D.

However, adding this compliance criterion would be no more redundant than other compliance criteria. Apps' Ex. 81 at 1137. Nor would it be punitive or rigid, both because it is already a regulatory requirement, *id.*, and OCD generally retains discretion whether the agency applies a determination of compliance under 19.15.5.9.A NMAC. *E.g.,*10/22/25 Tr. 685:4-7.

88. Applicants propose the following amendments to 19.15.5.9.B NMAC:

19.15.5.9.B Inactive wells.

(1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:

(a) shows no production or injection for past 14 ~~15~~ months or has had a final determination of no beneficial use under 19.15.25.9 NMAC;

(b) does not have its well bore plugged in accordance with 19.15.25.109 NMAC through 19.15.25.1211 NMAC;

(c) is not in approved temporary abandonment in accordance with 19.15.25.1312 NMAC through 19.15.25.1514 NMAC; and

(d) is not subject to an agreed compliance or final order setting a schedule for bringing the well into compliance with 19.15.25.8 NMAC.

(2) A well inactive for more than 14 ~~13~~ ~~15~~ months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

89. Originally, Applicants proposed decreasing the time an operator has to P&A a well or place it in TA under 19.15.25.8.B(1)(a) & -(2) NMAC after 12 months of inactivity from 3 months to 1 month. That proposal was then mirrored in the proposed changes to 19.15.5.9.B NMAC relating to when a well is placed on the "inactive well list."

90. During hearing, industry parties objected to the shortened time period as unworkable, *see, e.g.* 10/29/25 Tr. 263:8-264:12, while Deputy Director Powell testified operators had sufficient time to review their operations over the 12 prior months of inactivity while the well remained in compliance, 10/24/25 Tr. 218:4-19:19; OCD Ex. 15 at 33.

91. As a result of negotiations, the parties agreed to a **two month** period to plug or place a well in TA as a reasonable amount of time for operators to plug or place a well in TA. *See* Apps' Ex. 30 at 0713; Apps' Ex. 73 at 1003-04. That agreement is reflected in blue highlighted changes to 19.15.25.8.B(1)(a) & -(2) NMAC.

92. As a result of negotiations, Applicants propose adding to the inactive well list

wells that have "had a final determination of no beneficial use under 19.15.25.9 NMAC." This is in addition to the wells already covered by the criteria in the current rule. This provision reflects that wells that have a final determination of no beneficial use under 19.15.25.9 NMAC are inactive and are properly included on the inactive well list.

93. The remainder of the proposed amendments highlighted in blue in 19.15.5.9.B(1)(a) & -(b) NMAC renumber subsections in 19.15.25 NMAC to account for the addition in new Subsection 9 of Section 19.15.25 NMAC (PNBU).

C. Applicants' Proposed Amendments to 19.15.8 NMAC – Financial Assurance

1. Applicants' proposed amendments to 19.15.8.9.A NMAC - applicability

94. Applicants propose the following amendments to 19.15.8.9.A NMAC:

19.15.8.9.A Applicability. An operator who has drilled or acquired operating authority under 19.15.9.9 NMAC, is drilling or proposes to drill or acquire operating authority under 19.15.9.9 NMAC 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 OCC 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 under 19.15.9.9 NMAC until the operator has furnished the required financial assurance. This Subsection A applies to Subsections B through H of this Section.

95. Applicants propose language in 19.15.8.9 NMAC **clarifying** that the intent of the rule is to ensure that FA is in place prior to an operator drilling or acquiring operating authority. This amendment does **not** change current OCD practice. Apps' Ex. 15 at 0327.

96. The proposed clarification prevents scenarios where an operator incurs a plugging obligation—by drilling a well or acquiring operating authority over a well—before it has provided the required FA. In such a scenario, an operator could default on its plugging obligation, leaving OCD no FA to apply toward finishing the work and plugging the well. Apps' Ex. 81 at 1146-48.

97. Industry claimed this amendment would prevent and disrupt property transactions

between operators and therefore exceeds OCC's authority. Winchester Dir. Test. at 2; NMOGA Ex. E at 27-32 [Sporich Dir. Test.]. In their Reply in Support of Motion to Dismiss, pp. 5-6, NMOGA and IPANM proposed an "easy fix" to their concerns was to insert "operating authority" to modify "acquire" or "acquisition." While Applicants proposed industry language at hearing, 10/21/25 Tr. 576:11-20; Apps' Ex. 88, NMOGA and IPANM have disavowed it.

98. As a result of negotiations, Applicants propose adding "under 19.15.9.9 NMAC" to further clarify this provision does not insert OCD authority into property transactions.

99. During negotiations, the parties agreed to add "This Subsection A applies to Subsection B through H of this Section" to clarify that the effect of this Subsection applies throughout the remainder of 19.15.8.9 NMAC. Where individual subsections of 19.15.8.9 NMAC included superfluous language to this effect (*i.e.*, 19.15.8.9.C NMAC and 19.15.8.9.F NMAC), that language has been struck. Apps' Ex. 89-C.

2. Applicants' proposed amendments to 19.15.8.9.C NMAC - active wells

100. Applicants propose the following amendments to 19.15.8.9.C NMAC:

19.15.8.9.C Active wells. An operator shall provide financial assurance for wells ~~that are covered by Subsection A of 19.15.8.9 NMAC and~~ not subject to Subsections D and E of 19.15.8.9 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 projected depth of a proposed wells 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.~~

101. Striking ". . . that are covered by Subsection A of 19.15.8.9 NMAC and . . ." reflects the agreement to this language in Subsection A, making it unnecessary in Subsection C.

102. Paragraph (1) includes another non-substantive change by inserting the term "plugging" to "one well plugging financial assurance" to align it with terminology used in the

Act and 19.15.8 NMAC.

103. Applicants propose amending the one well FA requirement for active wells to $150,000 to bring it in line with the current average cost to OCD to plug wells, Apps' Ex. 4 at 0117, and to delete the one well FA for active wells calculated by adding a base amount of $25,000 and $2 per foot of well depth.

104. Well plugging costs have increased substantially over the past decade and, under the Act, one well FA must reflect OCD's reasonable costs to plug. Apps' Ex. 39; Apps' Ex. 30 at 39-42. As discussed, LFC found the average cost to OCD to plug a single orphaned well is $163,000 (which doesn't include costs for site remediation, which can be considerable). *See* Apps' Ex. 4 at 0117; Apps' Ex. 16 at 2 [FIR HB 481].

105. Other calculations of plugging costs in New Mexico have resulted in similar—or higher—figures. In its 2021 notice of intent to apply to the U.S. Department of the Interior for Orphaned Well Plugging Program grants, OCD estimated spending $290,611,502 to plug 1,741 orphaned wells, which averages $166,922.17 per well. Apps' Ex. 15 at 0315. In its 2024 Phase 2 Work Plan Proposal, OCD reported "recent average plugging costs of $180K per well." *Id.* That updated estimate was informed by several years implementing the initial orphaned well plugging program. *Id.* A one well FA of $150,000, therefore, closely approximates an amount "sufficient to reasonably pay the cost of plugging the wells," as required by the Act.

106. Industry objected to setting one well plugging FA to $150,000, arguing the cost to industry to plug wells is lower. NMOGA Ex. C at 29; NMOGA Ex. E at 19. However, NMOGA witness Clayton Sporich confirmed that NMOGA witnesses failed to present "industry cost statistics, profiles, or bonding market conditions." 10/30/25 Tr. 300:24 to 301:12.

107. In any event, because OCD will P&A orphaned wells—not industry—

Applicants' proposed amendment appropriately sets one well plugging FA at the cost to OCD. Mr. Sporich conceded this point during cross-examination. 10/30/25 Tr. 311:14-25.

108. Industry objected to setting one well plugging FA at $150,000 without a metric that factors in well depth. Sharpe Dir. Test. at 5; NMOGA Ex. B at 18; NMOGA Ex. D at 78. While the OCC may consider well depth in setting FA amounts, there is no statutory requirement that the FA amount be pegged to the depth of the well. Indeed, Deputy Director Powell confirmed well depth is **not** a good indicator of the total cost to plug a well. 10/24/25 Tr. 226:1-12, 232:8 to 233:23; *see also* OCD Ex. 6 at 12, 23.

109. Industry opposed setting one well plugging FA to $150,000 claiming that the FA requirements abandon the "risk-based" approach in the existing rules in exchange for a "one-size-fits-all" approach. NMOGA Ex. C at 86. Relatedly, industry witnesses suggested various piecemeal ideas that, in their view, more appropriately tailor one well bond requirements. NMOGA Ex. B at 15; NMOGA Ex. C at 49, 51; NMOGA Ex. D at 90. However, no industry witness offered specific FA proposals supported by data or modeling. Moreover, the general ideas for "risk-based" approaches suggested by industry are ineffective, impractical, or too vague to evaluate. Apps' Ex. 74 at 1059-64.

110. Applicants' amendments to Paragraph (2) replace the current tiered approach to calculating blanket FA amounts with a single blanket FA set at the statutory maximum for blanket bonds, $250,000.

111. Industry opposed removing the tier structure for blanket bonds, arguing removing the tiers will exponentially increase the bonding required. NMOGA Ex. D at 26. However, the current tiered approach is outdated in light of current costs to OCD to P&A wells—a $250,000 blanket bond does not even cover OCD's average cost to plug two wells.

112. Industry claimed Applicants' FA approach was "backwards" because it ignores OCD's ability to use the Reclamation Fund to P&A orphaned wells. Murphy Dir. Test. at 4-5. However, relying on the Reclamation Fund to cover the costs of plugging newly orphaned wells creates a negative incentive and moral hazard for operators. Moreover, doing so limits the funds OCD has available to pay toward well remediation, reclamation, and restoration, as OCD Environment Bureau Chief Rosa Romero testified. 10/24/25 Tr. 35:17-22.

113. If operators know OCD will use the Reclamation Fund rather than recover plugging costs from operators or operator FA, this will create a powerful incentive for operators to continue and even increase the practice of orphaning wells. An operator who knows its competitors are avoiding the cost of plugging would have little reason to choose to bear those costs itself. A compliant operator seeking to cover its plugging costs would have to either market its oil or gas at a higher price, leading to reduced sales, or make up the difference from profits. This means the vast majority of the state's 63,000 wells that will need to be plugged will become the state's responsibility, further overwhelming the Reclamation Fund. Apps' Ex. 15 at 0355.

3. Applicants' proposed amendments to 19.15.8.9.D NMAC - low producing wells

114. Applicants propose the following new section 19.15.8.9.D NMAC:

19.15.8.9.D **Low producing ~~Marginal~~ wells~~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 low producing well prior to transfer.

(2) Beginning May 1, 2029, ~~January 1, 2028,~~ operator shall provide a one well plugging financial assurance for each low producing ~~marginal~~ well. Each operator with a low producing ~~marginal~~ well or wells shall annually review the number of low producing ~~marginal~~ wells registered to the operator and shall update the one well plugging financial assurance by May 1 of each year.

(3) An operator of a low producing well may request a variance to the one well plugging financial assurance requirement of $150,000 upon a demonstration satisfactory to the division that there is a physical impediment limiting the well's midstream take away capacity. A demonstration shall include a certification from the operator detailing the nature of the physical impediment, explaining why the physical impediment is outside the control of the operator, detailing the alternatives that were or are being explored to address the lack of take away capacity, and an estimated date when the lack of take away capacity will be corrected. The demonstration shall also include the notification from the midstream operator required pursuant to 19.15.28.8.D NMAC.

~~**(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.

115. Section 19.15.8.9.D NMAC establishes requirements for a new FA category – low producing wells – a proposal that originated with OCD. *See* Apps' Ex. 5. OCD proposed this new category of FA based on staff's experience with high risk, low producing wells. Applicants adopted OCD's proposal, which increases the FA obligations of low producing wells to reflect a heightened risk of orphaning and to protect the state from this liability.

116. Applicants originally used the term "marginal well" to identify this category of well. During negotiations, the parties agreed to use "low producing well" as a better reflection of the wells included in the category and less subject to confusion.

117. Low producing wells are defined as wells that produce less than 180 days and less than 1,000 BOE within a consecutive 12 month period. *See* [proposed] 19.15.2.7.L(6) NMAC. Wells producing below these thresholds are near the end of their economic and productive lives and, therefore, present a higher risk of potential failure. 10/24/25 Tr. 214:19 to 215:23.

118. Wells producing below these thresholds are highly likely to generate only limited or negative profits from operations, increasing the risk of orphaning because the revenue they will produce over their remaining production may be less than the cost of plugging and remediating the well. This creates a strong incentive for operators, particularly new operators who did not enjoy the original profitable period of higher production, to avoid these costs. Apps' Ex. 30 at 0734; Apps' Ex. 15 at 0331.

119. Applicants' proposals for low producing wells create an important counterincentive, which prevents waste and protects correlative rights. By increasing the required FA, the rules incentivize operators to avoid incurring additional FA obligations for these

wells by increasing production beyond the low producing well definition to the extent possible. 10/27/25 Tr. 117:9 to 118:4, 147:8-23. If increasing production at a low producing well is not possible, these FA requirements incentivize the operator to plug or transfer the well, which protects the correlative rights of those who have an interest in and ability to utilize the subsurface minerals in that area. *Id.* 117:21 to 118:4.

120. Each component of the proposed low producing well definition is a critical proxy for identifying risk. The total amount of production relates directly to the revenue generated by that well. Apps' Ex. 15 at 0331. The number of days producing is important because operators can manipulate well production to make wells appear artificially productive, but only over short periods of time, giving the false impression that a well is economic when it is not. *Id.*

121. Under the proposed definition of low producing well, approximately 3,900 wells would be categorized as low producing wells, constituting 6.6% of New Mexico's well population and **0.048%** of total production in New Mexico. Apps' Ex. 40. These wells provide exceedingly low economic utility to their owners or to the state, but pose a high risk of being orphaned and requiring state resources to plug. Apps' Ex. 15 at 0331-32.

122. Not only does Applicants' proposed low producing well category cover a relatively small number of existing wells and even smaller percent of overall existing production in New Mexico, but Applicants also conservatively tailored this category to cover the riskiest wells based on the production days and production rates, as demonstrated in Apps' Ex. 44: over the past fifteen years, operators in New Mexico ended production at **59% of wells before** those wells would have fallen into the low producing well category.

123. Paragraph (1) establishes an immediate one well plugging FA of $150,000 for each low producing well prior to transfer, a proposal that originated with OCD. Apps' Ex. 5. The

FA amount reflects OCD's average costs to P&A, as discussed.

124. This requirement has immediate application because transfer of low producing wells to under-resourced operators is a major contributor to well orphaning. Apps' Ex. 15 at 0332. Transfers increase the risk of orphaning by separating the wells' profits (held by prior operators) from the expense of plugging and abandonment (now passed to the new operator). *Id.*

125. Historically and through today, low producing wells are transferred down the value chain to increasingly poorly capitalized operators until the final, bankruptcy-proof operator walks away and leaves the state holding plugging responsibility. Apps' Ex. 57 at 0881.

126. There has been a series of recent lawsuits on grounds of fraudulent transfer, contending that a transfer took place with the intention of relieving the transferor of liability and with the knowledge the transferee could not assume that liability. Accordingly, other states including Arkansas, Colorado, and California have recently adopted rules requiring full-cost FA for low producing wells prior to transfer. Apps' Ex. 57 at 0881.

127. A 2022 EDF analysis found that in New Mexico, 29% of producing wells in the state could be categorized as facing "transfer risk" (*i.e.,* when a well appears to have a negative net present value through 2050 based on forecasted production levels and operating expenses, though belonging to a relatively solvent operator). Apps' Ex. 57 at 0882.

128. Paragraph (1) would require operators to factor the price of decommissioning and FA into well transfers, therefore reducing the risk of well sales to operators who may be able to continue production (by lowering operational costs), but who may be less able or willing to cover the required plugging costs, given the expected negative future value of the asset.

129. Paragraph (2) requires one well FA of $150,000 for all low producing wells beginning **May 1, 2029**. The initial start date was January 1, 2028, but during negotiations

Applicants and OCD agreed to delay the date to allow industry additional time—approximately two years—to assess their inventory and plan for the change in FA by securing additional FA, plugging wells, transferring wells, or increasing production above the thresholds.

130. Industry claimed the one well FA of $150,000 for low producing wells would be prohibitively expensive for many operators and will tie up capital that operators could use for other industry operations. *E.g.*, Gilstrap Dir. Test. at 3, 6-7; NMOGA Ex. F at 8 [Emerick Dir. Test.]. However, these claims effectively admit that the companies affected by this proposed rule do not have the financial wherewithal necessary to pay to decommission their wells, nor a viable plan to pay for P&A. First, operators do not pay the face value of a required FA out-of-pocket, but rather pay an annual premium representing a fraction of that amount. Apps' Ex. 15 at 36. Second, the claim that the proposed rule would detrimentally tie up capital suggests that the imposition would affect operators who do not intend to save the necessary capital to be properly decommission their low producing wells. Apps' Ex. 30 at 1090.

131. IPANM witness Kyle Armstrong discussed his company's practice, stating that "[w]e pay for plugging out of cash flows and existing cash on hand. **But we have not designated fund for plugging purposes.**" 11/3/25 Tr. 129:17-24 (emphasis added). Mr. Armstrong acknowledged this practice is fairly typical across the industry. *Id.* 129:17 to 130:2.

132. Contrary to industry claims, Applicants' low producing well category is no more discriminatory against small operators than existing FA requirements. Apps' Ex. 82 at 1180-81. The criteria for low producing wells are low production and sporadic operation over time – not operator size. These two criteria apply to small, medium, and large operators. To the degree there is disproportionate impact, it follows from disproportionate risk. Apps' Ex. 74 at 1086.

133. Indeed, two of IPANM witnesses, Mr. Sharpe and Mr. Harvard, testified that, as

small operators, they could comply with Applicants' proposed rules, if promulgated. 10/31/25 Tr. 282:21 to 283:14; 11/6/25 Tr. 99:20 to 101:4.

134. Paragraph (3) establishes a variance for wells that are low producing as a direct result of a physical impediment to midstream take away capacity.

135. During the hearing, industry suggested operators may be unable to produce a well because of a constraint on midstream take away. 10/29/25 Tr. 97:4 to 98:2. Paragraph (3) reflects a proposal carefully crafted by the parties during negotiations that allows operators to apply for a limited variance to the low producing FA requirement on a well-by-well basis. The operator must certify the nature of the physical impediment, explain why the impediment is outside the operator's control, detail efforts made to address lack of take away capacity, and estimate when the problem will be resolved. The operator must include the notification from the midstream operator required pursuant to 19.15.28.8.D NMAC to report interrupted take away capacity. During hearing, Mr. Arthur agreed with Commissioner Bloom's suggestion that the operator could share this notification with OCD. *Id.*

136. Lack of take away capacity, adequately demonstrated, is the **only** circumstance under which a variance should be granted. There is insufficient evidence in the record to grant additional exceptions. A generalized variance for force majeure events could be inappropriately used by operators to avoid internalizing the risk of their low producing wells. A generalized variance also risks a flood of variance requests that could overwhelm OCD's capacity to ensure the legitimacy of each request.

137. As discussed, Applicants propose in Paragraph (4) to allow an operator to furnish FA for multiple low producing wells in a "single instrument" for administrative efficiency.

4. Applicants' proposed amendments to 19.15.8.9.E NMAC - operators with 20 percent or more of wells in inactive, approved temporarily abandoned or expired temporarily abandoned status

138. Applicants propose the following new section 19.15.8.9.E NMAC:

19.15.8.9.E Operators with 20 percent or more of wells in inactive, approved temporarily abandoned or expired temporarily abandoned status.

(1) Beginning May 1, 2029, an operator with 20 percent or more of their wells in inactive status, approved temporarily abandoned status or expired temporarily abandoned 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 wells in such statuses is decreased below 20 percent. Each operator subject to this requirement shall annually review the number of wells in inactive status, approved temporarily abandoned status or expired temporarily abandoned status registered to the operator and shall update the one well plugging financial assurance by May 1 of each year.

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

139. Section 19.15.8.9.E NMAC establishes a portfolio level FA requirement, a proposal that originated with OCD. *See* Apps' Ex. 5 [OCD Redline.

140. Applicants originally proposed that an operator well portfolio of 15 percent or more non-productive wells **and** "marginal wells" would trigger $150,000 FA for each well registered to the operator. *See* Apps' Ex. 72-C.

141. Operators with greater than 15 percent non-productive wells and marginal wells tend to have well plugging liability that exceeds the revenue their wells generate, which poses a risk to the state. Apps' Ex. 57 at 0890-91.

142. During negotiations, the parties agreed to increase the percentage threshold to 20 percent **and** to remove low producing wells from the calculation.

143. Increasing the percentage and removing low producing wells necessarily **decreases the number of wells and the number of operators impacted** by the portfolio level FA provision. Mr. Purvis estimated approximately 3,900 wells would be classified as low producing. Apps' Ex. 40.

144. The changes also result in **operator portfolios that are necessarily higher risk**

than originally proposed because the portfolios consist **only** of wells that are not producing at all, the highest risk wells.

145. The portfolio level FA requirement addresses the fact that operators with a significant proportion of non-productive wells pose a heightened risk of failure because they may not be able to generate sufficient cash flow to meet all their well plugging obligations. Operators with a higher proportion of non-productive wells generate less revenue at the same time they face higher costs from plugging. Apps' Ex. 15 at 0334.

146. Inactive, approved TA, and expired TA wells by their nature do not generate revenue and, therefore, increase the risk that an operator may be unable to generate sufficient cash flow to meet its well plugging obligations. *Id.*

147. This FA category prevents waste and protects correlative rights, similar to Applicants' proposed rules for low producing wells, by incentivizing operators either to increase production or transfer or plug their non-productive wells, all of which is in the public interest (as long as appropriate bonding is required upon transfer as well). Apps' Ex. 57 at 0888.

148. Industry claimed that Applicants' proposed portfolio level FA requirement is arbitrary and lacks a risk-based foundation. Ezzell Dir. Test. at 58; NMOGA Ex. B at 13-14, 30. However, risk of orphaning exists at a portfolio level. Apps' Ex. 30 at 0752; Apps' Ex. 74 at 1075-76. There can be no serious argument that the risk of default does not increase as production in a portfolio decreases. An operator with 100 percent non-productive wells presents more risk than an operator with no non-productive wells. *See* Apps' Ex. 74 at 1075-76. Increased bonding from operators with non-productive wells is certainly risk-based.

149. Apps' Exhibit 52 provides the basis for setting Applicants' original portfolio level FA requirements and serves as an instructive guide to understand the impact and basis for the

amended portfolio level proposal negotiated by the parties. Apps' Exhibit 52 substantiates increasing FA requirements for portfolios made up of greater than 15% low producing and inactive wells because a step-change occurred at that percentage threshold between the statewide production and wells impacted. Apps' Ex. 30 at 0753-55. Specifically, a threshold of 15% impacts only 2.3% of statewide production across only 18% of wells statewide. The discrepancy between the affected statewide production and wells attests to the idea that the threshold does, indeed, preferentially affect portfolios with greater numbers of low producing and inactive wells and, therefore, greater risk. *Id.*

150. The amended portfolio level proposed rule increases the threshold from 15% to 20% and limits operator portfolio analysis to non-productive wells. While Apps' Ex. 52 analyzes the impact of Applicants' original portfolio level rule at different percentage thresholds of inactive **and** marginal wells, the trend in declining impact as the percentage increases is indicative of the expected impact of the amended portfolio level rule.

151. Paragraph (2) (like 19.15.8.9.D(4) NMAC) provides operators flexibility to secure their required FA obligations through a single instrument instead of multiple instruments.

5. Applicants' proposed amendments to 19.15.8.9.F NMAC - inactive wells and wells in approved and expired temporarily abandoned status

152. Applicants propose the following amendments at 19.15.8.9.F NMAC:

19.15.8.9.F.~~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 F.~~E~~D of 19.15.8.9 NMAC.:

~~**(a)** $150,000 for one to five wells;~~

~~**(b)** $300,000 for six to 10 wells;~~

~~**(c)** $500,000 for 11 to 25 wells; and~~

~~**(d)** $1,000,000 for more than 25 wells.~~

153. The proposed amendments require one well FA for inactive, approved TA, and expired TA wells. As discussed, these wells are inherently more at risk of becoming orphaned: in addition to being non-productive and generating zero revenue, they incur maintenance and administrative costs. That risk is disproportionately shouldered by private landowners and OCD, based on OCD data that private wells account for roughly 15 percent of all statewide wells, yet 40 percent of inactive wells are on private land. Deputy Director Powell expressed concern about the disproportionate number of inactive wells on private land. 10/24/25 Tr. 213:8-22.

154. There are two non-substantive amendments in Subsection F. First, the amendment that begins Subsection F ensures that this provision covers all non-productive wells, i.e., inactive, approved TA and expired TA wells. Second, in Paragraph (1), the term "one well plugging financial assurance" is used for consistency with terminology in the Act and in 19.15.8 NMAC.

155. The substantive changes in Paragraphs (1) and (2) are to the amounts of FA coverage. One well FA is set at an amount approximating OCD's average cost of plugging for all wells at $150,000. A blanket FA option is maintained from the existing rule and is consistent with the Act's requirement the OCC establish a blanket bond no less than $50,000 for TA wells.

156. Increasing the FA obligations for non-productive wells incentivizes operators to produce the wells at a level that avoids the FA requirements proposed in this Subsection, thereby preventing waste, or to avoid the FA requirements by plugging or transferring the well, thereby protecting correlative rights.

157. Similar to prior objections, industry claims this FA provision will increase orphaning of wells because it will push operators to walk away from marginal assets. However, to the extent additional wells are orphaned following adoption of these amendments, the changes to the rules would not be to blame. Wells orphaned following implementation of the proposed

rules were likely to be orphaned regardless of the action the OCC takes because the operators of these wells failed to set aside the funds necessary for plugging. Apps' Ex. 81 at 1156.

158. Industry opposed Applicants' proposal at Paragraph (2) for inactive well blanket plugging FA, claiming that it creates an inappropriate and impractical "moving target" for blanket FA, as wells go in and out of inactive status. However, the current rules already require operators to increase FA for wells that enter TA status. Applicants' proposal similarly requires that bonding amounts change over time, as wells move in and out of TA. There's no evidence to suggest that operators cannot similarly adjust inactive well blanket FA according to Applicants' proposal, as operators have under the current rules.

159. The proposal at Paragraph (2) qualifies as a blanket FA because it is a single FA that covers all of an operator's wells that fall within this inactive and TA well category. Where appropriate, an operator can combine the blanket FA authorized under Paragraph (2) with other types of FAs (*e.g.* active well blanket FA and single well FAs) in a single instrument.

6. Applicants' proposed amendments to 19.15.8.9.G NMAC

160. Applicants propose the following amendments to 19.15.8.9.G NMAC:

19.15.8.9.G.~~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.~~

161. The proposed amendment brings the regulatory text of this Subsection into alignment with the other proposed changes to 19.15.8.9 NMAC, while still addressing the scenario where an operator with an existing blanket FA acquires additional wells.

162. In addition, the proposed amendments recognize that FA amounts in OCC rule must be consistent with any limitations in the Act at Section 70-2-14.

163. This yellow highlighted language negotiated with OXY provides operators with

the option of filing a single FA instrument to satisfy that operator's full FA obligation, including combining a blanket bond with one well FA, for the administrative efficiency for OCD, the operator, and FA providers. Apps' Ex. 81 at 1158.

7. Applicants' proposed amendments to 19.15.8.9.H NMAC

164. Applicants propose the following new section 19.15.8.9.H NMAC:

19.15.8.9.H.~~G.~~ Beginning ~~On~~ January 1, 2032 ~~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, 2031 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 2030; 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, 2031 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. The division may adjust the applicable financial assurance amounts in accordance with this Section but may not do so more frequently than three years from the date of the last adjustment.

165. This provision allows adjustments to FA amounts based on inflation to avoid the risk that, as actual plugging costs increase over time as the costs of materials and labor go up, FA amounts under 19.15.8.9 NMAC will cover a decreasing proportion of those costs. This provision grants OCD the discretion to make such adjustments, which avoids the need for repeated rulemaking proceedings to adjust the FA amount based on inflation.

166. As a result of negotiations, the parties agreed, first, to give OCD discretion to adjust FA based on inflation every three years instead of annually and, second, to delay implementation of the inflation adjustment provision for three years from the last effective date of the FA amendments (which is May 1, 2029 for low producing wells) to January 1, 2032 (from January 1, 2028). These changes address industry concerns that FA amounts could change frequently and it would be difficult for operators to frequently change and renew their FA instruments. *See* NMOGA Ex. D at 73.

167. Industry claimed the inflationary adjustment provision is outside the scope of

OCD's authority, NMOGA Ex. E at 26, and that the provision is arbitrary because a broad Consumer Price Index derived from the overall economy does not reflect changes in plugging and abandonment costs in the oilfield. NMOGA Ex. D at 73.

168. First, nothing in New Mexico statute prohibits adjustments to FA amounts based on inflation, and the Act gives OCC plenary authority to "make and enforce rules . . . reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section thereof." NMSA 1978, § 70-2-11; Apps' Ex. 81 at 1161. Moreover, the Act authorizes the OCC to set FA amounts based on "such other factors as the oil conservation division deems relevant." NMSA 1978, § 70-2-14(A). Increases to the costs of labor and materials based on inflation is a relevant factor. Apps' Ex. 30 at 0758-59. This proposed provision also recognizes the statutory cap of $250,000 on blanket bonds for active wells by excluding the FA amount in 19.15.8.9.C(2) NMAC from inflationary adjustment. *Id.*

169. Second, Apps' Ex. 53 demonstrates that the historic inflation of oilfield costs overall generally trends with the Consumer Price Index. Apps' Ex. 30 at 0759-60.

8. Applicants' proposed amendments to 19.15.8.10 NMAC - additional requirements for cash and surety bonds

170. Applicants propose the following amendments to 19.15.8.10.A NMAC:

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.

171. This amendment addresses the need to ensure the reliability of the provider of FA, including surety bond providers. Surety bonding is a common way for operators to satisfy FA requirements, but the regulator remains at risk that the surety provider itself may ultimately default and not be able to pay out the full value of the bond provided. Apps' Ex. 15 at 0350.

172. The U.S. Treasury Department maintains Circular 570 to provide a list of

companies that meet criteria specified at 31 U.S.C. § 9305 and 31 C.F.R. Part 223, which qualify these companies as eligible to provide surety bond for the benefit of the U.S. government. By requiring sureties be listed on this circular, New Mexico is able to rely on the vetting and regulation of sureties already performed by the U.S. government. *Id.* at 0349, 0351.

173. Industry claimed this provision would overly restrict the surety providers available to operators, and that the surety market isn't equipped to issue the volume of surety instruments that would be needed to comply with Applicants' proposed rules. NMOGA Ex. F at 12-13; 10/29/25 Tr. 125:3-17. However, there are 245 distinct surety providers on the circular, listing companies vetted by and deemed qualified to do business within the U.S., and almost all of those sureties are licensed to do business in New Mexico. Apps' Ex. 81 at 1130. Moreover, to the extent none of the hundreds of surety bond providers are willing to issue bonds covering the full liability for a New Mexico operator, this is a warning sign that the surety industry believes that operator would default on their plugging obligations. *Id.* at 1131.

9. Applicants' proposed amendments to 19.15.8.12 NMAC - release of financial assurance

174. Applicants propose the following amendments to 19.15.8.12.B NMAC:

19.15.8.12.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.

175. This proposed amendment codifies existing practice and ensures consistency with other regulatory provisions. Similar to the proposed amendment to 19.15.8.9.A NMAC, this amendment clarifies that FA for a new operator must be in place before the prior operator's FA may be released and further clarifies that the new operator satisfies prerequisites at 19.15.9.9 NMAC for OCD to approve the change of operator application.

176. The proposed amendment prevents a scenario where a prior operator secures

release of its FA for a well or wells to be transferred before the transfer is complete. If OCD is then unable to finalize the transfer of the permit to the new operator—because the new operator is unable to provide an acceptable replacement FA, or otherwise fails to satisfy the requirements of 19.15.9.9 NMAC—OCD would be left with a scenario where the wells' ownership is uncertain and there is no FA. Apps' Ex. 15 at 0352.

177. As a result of negotiations, the parties agreed to strike reference to 19.15.5.9 NMAC. Compliance with financial assurance requirements at 19.15.8 NMAC is already required at 19.15.5.9.A(1) NMAC.

D. Applicants' Proposed Amendments to 19.15.9 NMAC – Well Operator Provisions

1. Applicants' proposed amendments to 19.15.9.8 NMAC – operator registration

178. Applicants propose the following amendments to 19.15.9.8 NMAC:

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 van 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 a representative designated by the operator ~~an authorized official~~ ~~officer, director, or partner~~ that within the past ten years the new operator has not been ~~is not~~ subject to any final administrative forfeiture demand~~s~~ from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and has not been ~~is not~~ out of compliance with ~~does not have~~ an ~~unresolved~~ adjudicated order~~s~~ or ~~unresolved~~ settlement agreement~~s~~ with a state or federal agency for any state or federal violation~~s~~ related to oil and gas laws or regulations ~~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 within the past ten years has had a final administrative forfeiture demand~~s~~ from any state or federal agency, has forfeited financial assurance to any state or federal agency, or has been ~~is~~ out of compliance with ~~has unresolved~~ an adjudicated order~~s~~ or ~~unresolved~~ settlement agreement~~s~~ with a state or federal

agency for any state or federal violation related to oil and gas laws or regulations ~~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;

(~~2~~3) an officer, director, partner in the applicant or person with an interest in the applicant exceeding 25 percent, 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;

(~~3~~4) the applicant 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; or

(4~~5~~) the applicant is a corporation, ~~or~~ limited liability company, limited liability limited partnership, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state ~~public regulation OCC~~ to do business in New Mexico.~~; or~~

~~**(5)** the applicant is a limited partnership and is not registered with the New Mexico secretary of state to do business in New Mexico.~~

~~C.~~D. An operator shall inform the division of its current address of record and emergency contact names and telephone numbers by submitting changes in writing to the division's financial assurance administrator in the division's Santa Fe office within 30 days of the change.

~~D.~~E. ~~The division may require an~~ A~~n~~ representative designated by the operator shall ~~or applicant to~~ certify compliance annually of ~~identify~~ its current and past officers, directors and partners and its current and past ownership interest in other operators consistent with 19.15.9.8.C(2) and (3) NMAC.

179. Applicants propose to amend 19.15.9.8.B NMAC to require operators to provide the information to OCD that it may consider in approving or denying operator registrations.

180. The proposal also adds new criteria upon which OCD may approve or deny an operator registration which includes whether a new operator (1) has been subject to a forfeiture demand from a state or federal agency, (2) has forfeited FA to a state or federal agency, and (3) has been out of compliance with an adjudicated order or settlement agreement with a state or federal agency for a violation related to oil and gas laws or regulations.

181. These disclosures, certified by the operator, are critical to prevent "bad actor" operators from seeking refuge in New Mexico, as many oil and gas operators work across multiple jurisdictions and a history of noncompliance at out-of-state facilities should inform OCD's approval of registration in New Mexico. Similarly, information about individuals' wrongdoing at other companies is both common in regulation of resource extractors and necessary to allow OCD to prevent bad actors from registering. Apps' Ex. 15 at 0357-59.

182. The additional criteria based on noncompliance of operators does not require OCD to deny an operator registration. OCD retains full discretion to assess the severity of the

noncompliance and the risk to the state, and retains authority to approve or deny a registration.

183. According to OCD, the requirements for "detailed disclosures and compliance status [will prevent] individuals from evading liabilities by operating different companies." And this "[a]llows the state to review compliance history to adequately provide protection from companies that have a track record of being out of compliance." OCD's Ex. 15 at 26.

184. As a result of negotiations, Applicants propose three changes to this provision. First, Applicants substitute "authorized official officer, director, or partner" with "authorized official," to give operators greater flexibility in determining who may provide the required certification. Second, Applicants propose adding a backwards-looking ten-year limit on the compliance analysis performed for a new operator because as noncompliance becomes more distant in time, it becomes less relevant to an operator's current conduct and risks. Third, Applicants propose language **clarifying** the proposed list of actions operators would be required to disclose. This clarifying language reflects the parties' original intent.

185. Nonetheless, IPANM and NMOGA continue to object to these provisions. At hearing, industry claimed a minor violation in another jurisdiction would lead to denial of an operator. 10/30/25 Tr. 23:6-22. However, NMOGA's own legal expert, Mr. Sporich, acknowledged that "non-compliance should always be a barrier" for new operators. 10/30/25 Tr. 315:4-11. Indeed, noncompliance with state and federal law, coupled with substantial risk of inability to comply with closure requirements, are good reasons to deny an operator registration or transfer. Apps' Ex. 57 at 0903.

186. Industry claimed OCD lacks authority to require certification of compliance in other jurisdictions. NMOGA Ex. E at 36-37; Sporich Reb. Test. at 13-14. However, nothing in the proposed amendments authorizes or requires OCD to take any action outside its jurisdiction.

Apps' Ex. 81 at 1166; 10/31/25 Tr. 41:3 to 44:8. Industry claims OCD lacks authority to require another state to provide the information to OCD. 11/4/25 Tr. 48:8-13. But the proposed rules require the **operator**, not OCD or an out-of-state regulator, to provide the information. 11/4/25 Tr. 48:14 to 49:2.

187. Industry claimed that the proposals could lead to unfair treatment of operators based on a former employer's noncompliance, delay the entry of new operators in the state, and impair better-capitalized market participants from acquiring distressed assets from less-capitalized participants. Mitchell Dir. Test. at 6; NMOGA Ex. E at 38-40; NMOGA Ex. B at 50.

188. However, the amendments only affect operators who have participated in companies that have accrued violations; if documented violations are attributable to a small number of bad actors, as claimed by industry, the proposed amendments should not materially impact the vast majority of operators. Additionally, industry witnesses failed to explain why it is in New Mexico's interest to facilitate the continued operation of bad actors. Apps' Ex. 81 at 1166-67; *see also* Winchester Dir. Test. at 6 (list of noncompliant operators is "discrete").

189. Applicants' proposal to amend Paragraph (5) and strike existing Paragraph (5) of proposed 19.15.9.8.C NMAC, which specifies the criteria by which OCD may deny registration as an operator, is administrative, reflecting the already established change to the office that companies register with from the "public regulation commission" to the "New Mexico secretary of state." Apps' Ex. 15 at 0360. In response to SLO testimony, Applicants add "limited liability limited partnership[s]" to align with NMSA 1978, § 54-2A-108. 10/27/25 Tr. 209:10-19.

190. Industry objected that "good standing" is a filing status, rather than a performance proxy. Felix Reb. Test. at 39; Arthur Reb. Test. at 96-97. However, the addition of this reference reflects that an entity registered with the Secretary of State's office may have since fallen out of

good standing. Apps' Ex. 81 at 1168.

191. At 19.15.9.8.E NMAC, Applicants propose to make certain disclosures mandatory, rather than optional, submissions to OCD. The amendment specifies the form of the disclosure as a certification and requires annual submission. This amendment gives effect to other existing and proposed provisions in 19.15.9.8 NMAC. Apps' Ex. 15 at 0361. As a result of negotiations, Applicants amended the provision to allow an operator to designate a "representative" to perform the certification, to provide flexibility for operators.

192. Finally, as discussed in Section III.C of the Closing Argument, industry objected to Applicants' proposed amendments to the operator registration and change of operator provisions as outside OCC's authority. NMOGA Ex. C at 48-49; Sporich Reb. Test. at 13-14. However, the OCC's plenary authority under Section 70-2-11 of the Act gives it ample authority to ensure that operators registering wells do not present undue risk to the state. Furthermore, for almost two decades OCC rule has authorized OCD to deny operator registrations and change of operator based on compliance history. Applicants' proposed amendments are no different in kind than the authority OCD has exercised for many years.

2. Applicants' proposed amendments to 19.15.9.9 NMAC – change of operator

193. At 19.15.9.9 NMAC, Applicants propose:

19.15.9.9 CHANGE OF OPERATOR:

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 a representative designated by the operator ~~an authorized official~~ ~~officer, director, or partner~~ of the new operator that within the past ten years the new operator has not been ~~is not~~ subject to any final administrative forfeiture demand~~s~~ from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and has not been out of compliance with ~~does not have unresolved~~ an adjudicated order~~s~~ or ~~unresolved~~ settlement agreement~~s~~ with a state or federal agency for any

state or federal violations related to oil and gas laws or regulations ~~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 a representative designated by ~~an authorized official 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 or 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) within the past ten years the new operator has had a final administrative forfeiture demands from any state or federal agency, has forfeited financial assurance to any state or federal agency, or has been out of compliance with ~~has unresolved~~ an adjudicated orders or ~~unresolved~~ settlement agreements with a state or federal agency for any state or federal violations related to oil and gas laws or regulations ~~is out of compliance with federal and state oil and gas laws and regulations~~ in any domestic jurisdiction ~~each state~~ in which the new operator does business;

(3) 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;

(4) 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;

(5) the applicant is a corporation, limited liability company, limited liability limited partnership, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state to do business in New Mexico; or

(6) the certification or disclosure requirements set forth in Subsection B of this Section disclose a substantial risk that the new operator would be unable to satisfy the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells the new operator intends to take over.

D. In determining whether to grant or deny a change of operator when the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC, the director or the director's designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or OCC order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having ~~more than the allowed number of~~ wells out of compliance with 19.15.25.8 NMAC. If the non-compliance is caused by the operator having ~~more than the allowed number of~~ wells not in compliance with 19.15.25.8 NMAC, the director or director's designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

E. No well, facility or site that is out of compliance with Subsection A of 19.15.5.9 NMAC, 19.15.29 NMAC, or 19.15.30 NMAC shall be transferred unless, prior to transfer, the current operator brings the associated well, facility or site into compliance or the new operator submits a schedule of compliance approved by the division.

194. Applicants propose amending 19.15.9.9.B NMAC, relating to change of operator, to require transferee operators to provide the same disclosures and certification as required for operator registration.

195. Industry raised the same arguments in opposition to Applicants' proposals at 19.15.9.9 NMAC as raised in opposition to 19.15.9.8 NMAC, including challenging OCC's authority to require certifications on noncompliance, the unfair treatment of operators, the potential delay of new operators entering the state, and the impairment of market participants to acquire distressed assets. *See, e.g.* NMOGA Ex. B at 49-50; Ezzell Reb. Test. at 9.

196. The same evidence and rationales that support giving OCD authority to scrutinize operators' compliance history for purposes of registration apply for purposes of change of operator, and are incorporated herein. *See* Section V.D.1 of Statement of Reasons. The rationales apply with even more force to well transfers because of the heightened risk at transfer.

197. As a result of negotiations, Applicants propose several changes to their proposal, mirroring those in 19.15.9.8 NMAC and supported in the preceding Section V.D.1. That discussion is incorporated herein and will not be repeated.

198. In addition, Applicants propose the transferee operator submit a certified plugging and abandonment plan. At the point of transfer, wells have already established plugging liabilities but may no longer have the capacity to generate revenue sufficient to cover the plugging costs. Applicants' proposal allows OCD to address the heightened risk of orphaning for transferred wells by requiring that operators provide information about their compliance and financial wherewithal to plug. The proposal reflects the reality—acknowledged by industry witnesses—that wells are often transferred to smaller and less capitalized operators as they age. Apps' Ex. 15 at 0371-72; Apps' Ex. 30 at 0764-72; Apps' Ex. 57 at 0900-02; Apps' Ex. 74 at

1103; NMOGA Ex. C at 105, 117.

199. Industry objects to the requirement to submit and certify a plugging and abandonment plan prior to transfer, claiming the requirement is unclear, requires disclosure of sensitive business information, fails to reflect fluctuating financial positions, and disincentivizes transactions. Arthur Reb. Test. at 101-102; NMOGA Ex. B at 55; Winchester Dir. Test. at 4.

200. However, the requirement is flexible, confidential business information is protected by statute at NMSA 1978, § 71-2-8, and the requirement of a plan mitigates risk at the point of transfer. Apps' Ex. 74 at 1103-4, 1107-08; 10/30/25 Tr. 71:11-73:10; Apps' Ex. 30 at 0772-73. In sum, requiring a plugging and abandonment plant will allow OCD to deny transfers when there is evidence the new operator lacks the resources or ability to satisfy operating and plugging obligations. Apps' Ex. 15 at 0374-76; Apps' Ex. 30 at 0773; Apps' Ex. 57 at 0903.

201. Industry claimed the proposed certifications would act as a prohibition on some transfers, in violation of New Mexico's ban on the impairment of obligations of contracts. NMOGA Ex. E at 41-42. However, the proposed amendments simply provide additional grounds for OCD denial of change of operator for regulatory purposes; they do not apply to the actual sale of a well. Apps' Ex. 81 at 1167; 11/4/25 Tr. 67:12-68:22.

202. At 19.15.9.9.D NMAC, Applicants' proposal reflects proposed changes to 19.15.5.9.A NMAC (disallowing wells to be out of compliance with the plugging requirements in 19.15.25.8 NMAC), and maintains regulatory consistency with that proposed amendment. Apps' Ex. 15 at 0376-77.

203. At 19.15.9.9.E NMAC, Applicants' proposed amendment would ensure that a current operator cannot use transfer to avoid liability for plugging or cleanup obligations that have already come due by prohibiting transfer of wells that are overdue for plugging, have

unaddressed spills, or otherwise have outstanding remediation needs, unless OCD determines the well is in compliance or has approved a schedule of compliance. Apps' Ex. 15 at 0377.

204. Industry claimed that many wells are transferred precisely because the incoming operator is better capitalized or otherwise equipped to remediate them and suggest that OCD limit this provision to instances of "material and ongoing compliance issue[s]." Arthur Reb. Test. at 108; NMOGA Ex. E at 43. However, Section 19.15.9.9.E NMAC does not bar noncompliant wells from transfer—it addresses the conditions under which those wells may be transferred and ensures the new operator **is** equipped to remediate them. Apps' Ex. 15 at 0374, 0377.

E. Applicants' Proposed Amendments to 19.15.25 NMAC – Plugging and Abandonment of Wells

1. Noncompliance of inactive wells

205. Section 19.15.25 NMAC governs the proper plugging and abandonment of inactive wells.

206. The data gathered by Applicants' experts demonstrates operators' noncompliance with Part 25 is rampant. As of July 3, 2025, there were **3,765** wells on OCD's Inactive Well List, 419 of which were in approved TA status, 155 in expired TA status, and **3,234** were out of compliance. Only a small percentage of inactive wells were in approved TA, **11%**, while the vast majority of inactive wells were out of compliance with OCC rules, **86%.** Apps' Ex. 7 [OCD Inactive Well Search List]; Apps' Ex. 3 at 0073.

207. LFC concurs, finding ". . . virtually all wells on the inactive list are eligible for enforcement action . . . ." Apps' Ex. 4 at 0122.

208. Mr. McGowen agrees this noncompliance is high. 10/30/25 Tr. 75:11 to 76:10.

209. Many of these wells have been inactive for long periods of time: 1,941 for more than 5 years; 1,156 for more than 8 years; 888 for more than 10 years; 160 for more than 20

years; and 100 for more than 25 years. Apps' Ex. 8 [wells inactive by time]; Apps' Ex. 10 [compliance status of inactive wells]; Apps' Ex. 3 at 0075.

210. And it's not a handful of operators whose wells linger in inactive status for long periods of time, it's many: 241 operators have wells inactive more than 5 years, 171 operators for more than 8 years, and 133 operators for more than 10 years. Apps' Ex. 9 [operators with inactive wells by time]; Apps' Ex. 3 at 0076.

211. The number of wells in **expired** TA is increasing over time: from below 50 wells in 1990 to more than 250 wells in 2024. Wells in expired TA are flagrantly out of compliance. Apps' Ex. 11 [wells in approved and expired TA]; Apps' Ex. 3 at 0078-79.

212. Inactive wells pose a host of public health and environmental problems and are at greatest risk of orphaning. Those risks only increase the longer a well remains inactive. Apps' Ex. 3 at 0070-72, 0074, 0077.

213. Therefore, it's critical to establish a regulatory structure that protects against wells lingering in inactive status for long periods. In 19.15.25 NMAC, Applicants propose (1) establishing **"presumptions of no beneficial use"** requiring a showing of beneficial use for extremely low producing wells and (2) requiring operators to demonstrate **future beneficial use** before a well can be placed in TA. If an inactive well has no present or future use, it should be "immediately" plugged and abandoned. Apps' Ex. 3 at 0087.

2. Applicants' proposed amendments to 19.15.25.8 NMAC - wells to be properly abandoned

214. Applicants propose the following amendments to 19.15.25.8.A NMAC:

19.15.25.8 WELLS TO BE PROPERLY ABANDONED:

A. The operator of wells drilled for oil or gas or services wells including seismic, core, exploration or injection wells, whether cased or uncased, shall plug the wells as Subsection B of 19.15.25.8 NMAC requires.

B. The operator shall either properly plug and abandon a well or apply to the division to place the well in approved temporary abandonment in accordance with 19.15.25 NMAC within ~~90~~ 60 days after:

(1) a 60 day period following suspension of drilling operations, except a well that has

been drilled and properly cased but not completed for less than 18 months and a well that has been completed but has not produced for less than 18 months, unless the well is a dry hole;

(2) a determination that a well is no longer usable for beneficial purposes; or

(3) a period of one year in which a well has been continuously inactive.

215. Applicants propose language in 19.15.25.8.B NMAC clarifying that an operator must apply to OCD to place a well in TA. Apps' 81 at 0081.

216. Applicants originally proposed decreasing the time period in 19.15.25.8.B NMAC within which an operator must P&A an inactive well or apply for TA from 90 to 30 days. A well subject to this provision has already been inactive for 12 months. Therefore, the operator has had sufficient time to assess whether to P&A the well or apply for TA, and there's no need for an additional three months, which represents delay and potential risk. Apps' Ex. 3 at 0081-82.

217. Industry opposed the change as unworkable. NMOGA Ex. 3 at 32-33.

218. During negotiations, the parties agreed to 60 days as appropriate. The change from 90 to 60 days is reflected in 19.15.5.9.B(1)(a), (d) NMAC & 19.15.5.9.B(2) NMAC.

219. As a result of negotiations, the parties agreed in 19.15.25.8.B(1) NMAC that a well that has been suspended for 60 days but that (1) was drilled and properly cased but not completed for less than 18 months or (2) has been completed but has not produced for less than 18 months is not subject to the requirement to P&A or place in TA (unless the well is a dry hole).

220. Applicants originally proposed to strike the word "continuously" from 19.15.25.8.B(3) NMAC because, according to OCD, some operators "game the system" by producing or reporting production for inactive wells for short periods to avoid the requirement to P&A. Apps' Ex. 3 at 0082. However, during negotiations it became clear that, if the OCC adopts 19.15.25.9 NMAC, establishing presumptions of no beneficial use, OCD will have the regulatory authority to evaluate whether wells producing very low amounts (less than 90 BOE) over short periods of time should be plugged, and removing the word "continuously" is not necessary.

3. Applicants' proposed amendments to 19.15.25.9 NMAC - presumptions of no beneficial use

221. Applicants propose the following new section 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 presumed to not being used for beneficial purposes, a well operator may submit an application for administrative review ~~of such determination through~~ to the division's ~~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. An operator may file ~~request~~ an application for hearing within 30 days of the division's ~~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) A demonstration ~~Documentation demonstrating~~ that the well is reasonably projected to produce in an economically beneficial manner ~~paying quantities~~; ~~and~~

(2) A demonstration that the well has effectively produced or injected at least 90 days within the consecutive 12 month period and there is no downhole mechanical integrity problem;

(3) A demonstration ~~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 or provided by the operator or a regulatory agency.

E. This Subsection shall become effective 12 months after [the effective date of this rule], except that as to operators that the division determines are substantially out of compliance with 19.15.7.24 NMAC, 19.15.8.9 NMAC, or 19.15.25.8 NMAC, this Subsection shall become effective on [the effective date of this rule].

222. Section 19.15.25.9 NMAC establishes presumptions of no beneficial use for production and injection wells, a proposal that originated with OCD. The presumption originally applied to wells that produced less than 90 BOE and less than 90 days in 12 months and wells that injected less than 100 barrels and less than 90 days in 12 months. Apps' Exs. 1-E, 72-E.

223. If a well meets the criteria, OCD would presume the well has no beneficial use and the operator is given full opportunity through an administrative review process to rebut the presumption and demonstrate that the well has beneficial use. Apps' Ex. 3 at 0083-87.

224. As a result of negotiations, the proposal to establish PNBU has changed in two significant ways:

- In 19.15.25.9.A & B NMAC, the number of days of production or injection is no longer a criterion to establish a PNBU, but can be used to rebut the presumption, and
- In 19.15.25.9.E NMAC, the effective date has been delayed by 12 months, except for operators who are substantially out of compliance with 19.15.7.24 NMAC, 19.15.8.9 NMAC, or 19.15.25.8 NMAC.

225. During hearing, Deputy Director Powell agreed with NMOGA witness Arscott that a bad actor can manipulate their data reported to OCD to avoid coming within the presumption. Mr. Powell observed, "that's always at risk," 10/24/25 Tr. 236:13-25, especially with respect to reporting days of production. "If the OCC wanted to set [the presumption criteria only] at BOE, **that's probably something that could be less likely skewed**. It could be probably more verified with buyers if we go to refineries or we go to gas plants, we go to sales meters because there's more third parties involved in that." *Id.* 236:13 to 237:6 (emphasis added).

226. Mr. Powell "ran some new numbers" and testified that "[i]f we just went to BOE, it would encompass more wells, honestly. But operators could then bring as part of their presumption of beneficial use data showing where they're trying to produce that well. **But it would be more verifiable data than just having them put days in their report.**" *Id.* 237:8-15 (emphasis added).

227. Mr. Powell explained that, if the OCC retains the number of days criterion in the PBNU, OCD would need to investigate various wells to determine if the reporting is accurate or if there is a data quality problem. But if the days were removed, the obligation to explain how the well – which is producing less than 90 BOE a year -- is relied upon. "So either way, potentially that days in production is going to have to be investigated in the future, whether it's something

the operator uses as their justification for beneficial use or whether it's something that the OCD has to look at and make sure it's not being abused." 10/27/25 Tr. 51:9 to 52:12. The proposed change puts the onus on the operator.

228. Establishing a PNBU based production of 90 BOE in 12 months is reasonable. That production level amounts to roughly **0.25 BOE per day**, which in almost all circumstances, after tax, royalties, and operating expense, is not economic. OCD should have the authority to scrutinize wells operating at the edge of solvency to prevent the state from taking on more orphaned wells. The administrative review is not directed at prudent stripper well operators but those in OCD staff's experience who are problematic. Apps' Ex. 3 at 0084-85.

229. LFC recognizes that the "potential liability for extremely low-producing wells greatly exceeds potential tax contributions. While wells can continue producing in very low quantities for extended periods of time, the financial risk those wells pose to the state far exceeds potential tax revenues." Apps' Ex. 4 at 0126.

230. LFC deemed wells at or below **two BOE per day** problematic observing that, in New Mexico, the average well is plugged and abandoned at two BOE a day. *Id.* at 0108, 0125. The proposed presumption represents production well below two BOE a day.

231. The same analysis applies to injection or salt water disposal wells where OCD administrative review is triggered when injection is less than 100 barrels of fluid over 12 months. At this level, an injection well is barely operating, but the operator nonetheless has the opportunity to demonstrate the well has beneficial use. Similarly, the purpose is to intervene in problematic situations and assess whether operators should P&A the well **before** that responsibility falls to the state. *Id.* at 0085-86.

232. Subsection D of 19.15.25.9 NMAC sets forth the administrative procedures for a

determination of no beneficial use: OCD gives notice that a well is presumed not to have beneficial use; the operator has a full opportunity to provide relevant information to rebut the presumption; and the operator has an opportunity to challenge OCD's final determination pursuant to 19.15.4 NMAC. Apps' Ex. 3 at 0086-87.

233. Aside from wordsmithing and minor changes to this Subsection, as a result of negotiations, Applicants agreed to:

- Add a time period of 30 days within which an operator may file a request for hearing to challenge an OCD determination to apply the presumption to provide certainty and clarity when a challenge must be filed,
- Make the types of documentation required to rebut the presumption **discretionary**, not mandatory, recognizing that circumstances differ from well to well and operator to operator,
- Revise the demonstration of economic viability of a well from requiring a showing a well produces in "paying quantities," which is a legal, financial, and technical term subject to varying definitions, to a broader showing that the well produces in "an economically beneficial manner," *see* NMOGA Ex. B at 7-8,
- Move the number of days of production or injection from a criterion to establish a presumption to information that may be presented to rebut the presumption (as discussed above), and
- Add consideration of information from another regulatory agency (such as the U.S. Bureau of Land Management) as information that may be provided to rebut the presumption.

234. The other major revision to 19.15.25.9 NMAC is to delay implementation for 12 months in recognition of the fact that establishing PNBU represents a significant change to the current regulatory framework and to give operators an opportunity to evaluate wells that will be subject to the presumption and to plan accordingly.

235. The delayed implementation, however, does not apply to operators "substantially out of compliance" with 19.15.7.24 NMAC (requiring filing of monthly C-115 production reports), 19.15.8.9 NMAC (FA amounts), or 19.15.25.8 NMAC (plugging and abandonment

requirements). These represent critically important regulatory requirements and, if an operator's well management is substantially out of compliance with these fundamental requirements, the operator is subject to the PNBU. While determining "substantial compliance" gives OCD discretion, state agency discretion must always be exercised responsibly and cannot be abused. *Accord* NMSA 1978, § 70-2-13(C)(1).

4. Current OCC rules on temporary abandonment

236. While an operator must demonstrate the mechanical integrity of a well to place it in TA status, OCC rules require no justification for placing the well in TA in the first place. Current rules allow an inactive well to be placed in TA status without any showing the well has future beneficial use or why the well should not be plugged. *See* 19.15.25.8, -12, -13, & -14 NMAC; Apps' Ex. 3 at 0054, 0079-81.

237. TA status may then be renewed at five year intervals, but there still is no requirement to demonstrate the inactive well will have future utility or to justify why the well should not be plugged. TA status can be renewed indefinitely without the operator ever demonstrating the well has future use. 19.15.25.12.A NMAC; Apps' Ex. 3 at 0054-55, 0079-81.

238. Mr. Alexander reviewed samples of operator applications for TA and renewed TA on OCD's form C-103. Apps' Ex. 12 (attaching 30 C-103's from 2021-25). The C-103 does not require any demonstration of future beneficial use nor require operators to provide a reason why their inactive well should not be plugged. While in some applications the operator "gave somewhat of a reason why TA status was being requested [or extended], there is never any technical, geological, economical or administrative data and justification to support the request whatsoever." Apps' Ex. 3 at 0079-80. However, if a well has no present or future beneficial use, there is no good reason not to P&A the well. *Id.* at 54-56, 79-81.

239. Applicants' proposal to require a showing of future beneficial use to place and maintain a well in TA is consistent with the vast majority of oil and gas states' requirements. Mr. Alexander reviewed rules from approximately 15 producing states and a common requirement among them was a demonstration of future utility or beneficial use for approval or extension of TA status. Apps' Ex. 3 at 0055.

240. The longer a well remains inactive – even if in approved TA -- the greater the risk to public health and the environment and the greater the risk the well will be orphaned. Apps' Ex. 3 at 0070-72, 0074, 0077.

5. Applicants' proposed amendments to 19.15.25.13 NMAC - approved temporary abandonment

241. Applicants propose the following amendments to 19.15.25.13.A NMAC:

19.15.25.13.A The division may place a well in approved temporary abandonment for a period of up to five years upon a demonstration from the operator that the well will be used for beneficial use within the approved period of temporary abandonment.

(1) The operator's demonstration shall include an explanation why the well should be placed in temporary abandonment, how the well will be put to beneficial use in the future including supporting technical ~~and economic~~ data, a plan that describes the ultimate disposition of the well, and the time frame for that disposition.~~; and~~

(2) The operator shall provide any other information the division determines appropriate, including a current and complete well bore diagram; geological evidence; geophysical data; well casing information; waste removal and disposition; production engineering; geophysical logs, e.g., cement bond logs, caliper logs, and casing inspection logs; economic data; and health, safety, and environmental information.

(3) If the division denies a request, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

242. Section 19.15.25.13.A(1) NMAC sets forth the demonstration to place a well in TA which includes how the well will be put to beneficial use, including supporting technical data and a plan for disposition of the well.

243. As a result of negotiations, Applicants propose in 19.15.25.13.A(2) NMAC giving OCD more discretion in the information an operator is required to provide.

244. The information required or that OCD may request is straightforward and easily available and includes relevant data and analysis so OCD can assess whether the well is likely to

be put to use in the future or whether it should be plugged because the operator cannot demonstrate future use. Apps' Ex. 3 at 0088-89.

245. If the operator cannot demonstrate future beneficial use, the well must be plugged and the site remediated under proposed 19.15.25.13.A(3) NMAC. Applicants propose the following amendments to 19.15.25.13.B NMAC:

19.15.25.13.B Prior to the expiration of an approved temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location, or apply for a new approval to temporarily abandon the well for a period of up to two years in accordance with 19.15.25.13.A NMAC and ~~shall~~ demonstrate the well's mechanical integrity in accordance with Sections 19.15.25.14 and -15 NMAC~~. to the division to extend temporary abandonment status pursuant to the procedures for adjudicatory proceedings in 19.15.4 NMAC, except that in any such adjudicatory proceeding any interested person may intervene under 19.15.4.11.A NMAC. To continue in temporary abandonment, the operator must demonstrate to the division that the well will be returned to beneficial use within the requested period of temporary abandonment. The request shall include documentation demonstrating why the well should remain in temporary abandonment; documentation demonstrating why the well was not brought back to beneficial use or plugged and abandoned during the period of temporary abandonment; documentation demonstrating how the well will be put to beneficial use in the future and supporting technical and economic data; a plan that describes the ultimate disposition of the well, the time frame for that disposition; and a health and safety plan demonstrating the well's casing and cementing meet the requirements of Subsections B and C of Section 19.15.25.13 NMAC and the operator has adequate monitoring procedures in place to ensure such requirements will be met.~~ A second ~~An extended~~ term shall not exceed two additional years, upon which time the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

246. Section 19.15.25.13.B NMAC sets forth the process to renew TA status. TA can renewed up to two years on the same basis as provided for in Subsection A.

247. Applicants originally proposed that a hearing pursuant to 19.15.4 NMAC must be held to extend TA status for two years. As a result of negotiations, Applicants propose the two year renewal may be on the same basis as the initial placement into TA, and a hearing is provided for upon an "extension" after the two year renewal. While an operator must still demonstrate the well has future beneficial use to obtain the two year renewal, this change gives operators additional time to plan for wells' final disposition.

248. Generally a well that is up for TA renewal has been inactive for **six years**: one year of inactivity prior to going into TA and five years in TA. Allowing for a two year renewal means the well would have been inactive for **eight years**. **The likelihood that a well will be put**

back into productive use after eight years of inactivity is almost nonexistent. Apps' Ex. 13 [time deactivated wells reactivate]; Apps' Ex. 3 at 0095-96.

249. The vast majority of reactivations of inactive wells – over 90% -- occur within **three and one-half years** of a well going inactive. After six years, only **98.5%** of wells go back into use. After eight years, only **99.5%** go back into use. Apps' Ex. 13; Apps' Ex. 3 at 0095-96.

250. These data track Applicants' proposed time periods for TA. After six years of inactivity, an operator must reapply to renew TA status. But that status can only be renewed for two years because the likelihood of the well going back to productive use after eight years of inactivity is less than 1%.

251. Because the risks to public health and the environment and orphaning increase the longer a well remains inactive, it is critical to ensure that wells that no longer have future beneficial use are promptly plugged.

252. Applicants propose a new Subsection C to Section 19.15.25.13 NMAC, which allows operators to obtain five year "extensions" to remain in TA:

19.15.25.13.C Extension.

(1) Prior to the expiration of a renewal of an approved temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location, or apply for an extension to continue to place the well in temporary abandonment for a period of up to five years.

(2) To obtain an extension, the operator shall apply to the division to extend temporary abandonment status. The division shall provide at least 30 days' notice of the application for extension on its website and to the division mailing list, and the operator shall provide at least 30 days' notice of the application for extension in a newspaper of general circulation. The operator, division, or any interested person may request a hearing on the application for extension before the division. Any such hearing shall be conducted pursuant to the procedures for adjudicatory proceedings in 19.15.4 NMAC, except that in any such adjudicatory proceeding any interested person may intervene under 19.15.4.11.A NMAC. If a hearing is not requested, the division shall proceed with processing the application for extension.

(a) ~~**(3)**~~ To obtain an extension, the operator shall demonstrate to the division that the well has future beneficial use.

(b) The application for extension shall include:

(i) a plan of development for the well that includes documentation that the plan is technically feasible and financially viable;

(ii) a description of any work completed and in progress under ~~on~~ the plan of development;~~.~~

(iii) documentation demonstrating why the well was not brought back to beneficial use as had been proposed or plugged and abandoned during the prior period of temporary abandonment;

(iv) a plan that describes the ultimate disposition of the well including ~~:~~ the

time frame for that disposition; and

(v) documentation demonstrating the well's casing and cementing meet the requirements Sections 19.15.25.14 and -15 NMAC and that monitoring procedures are in place to ensure such requirements will be met and maintained during the period of temporary abandonment.

(c) The operator shall provide any other relevant information requested by the division including engineering information, geological information, financial information, and applicable contracts that support the future beneficial use.

(4) An operator may reapply for an extension for periods of up to five years under the same terms and conditions as provided for in this Subsection. If the division denies a request for extension, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

253. One of the most significant changes to Applicants' original proposal, as a result of negotiations, is they propose a revised TA process in new Subsection C that allows a well to remain in TA status, but under stringent conditions: (1) the operator must make a robust showing of future beneficial use; (2) TA status is subject to periodic review every five years; (3) the request for extension is subject to a hearing upon request by OCD, the operator, or an "interested" member of the public; and (4) there must be a strong showing that public health and the environment are protected. *See* Apps' Ex. 73 at 1018-19.

254. While an operator may apply for an "extension" of TA after eight years of inactivity, given the remote chance the well will go back into production – but recognizing that secondary and tertiary recovery projects can be years in the making – a detailed demonstration that the well/s will in fact be put to productive use is required.

255. Required documentation includes a technically feasible and financially viable plan of development for the well, documentation of work completed and in progress on the plan, documentation why the well was not brought back to use during the TA period, and a plan for ultimate disposition of the well. [Proposed] 19.15.25.13.C(2)(a) & (b)(i)-(iv) NMAC; Apps' Ex. 3 at 0090-91.

256. The operator must also demonstrate mechanical integrity under OCC rules and that monitoring procedures are in place to ensure mechanical integrity will be maintained throughout the TA period. [Proposed] 19.15.25.13.C(b)(iv) NMAC; Apps' Ex. 3 at 0091-92.

257. Initially Applicants proposed that renewal of TA for two years must be subject to a public hearing. As a result of negotiations, Applicants propose that a public hearing before OCD be held **upon request** by OCD, the operator, or an "interested person" if an operator applies for an extension. To ensure adequate public notice, any such application for extension hearing would be subject to 30 days' notice by OCD on its website and mailing list and by the operator in a newspaper of general circulation. [Proposed] 19.15.25.13.C(2) NMAC.

258. Remarkably, OXY's **only** disagreement with Applicants' entire proposals is at 19.15.25.13 NMAC, allowing an "interested person" who does not have traditional standing to request a hearing and requiring the operator to notice the hearing in newspaper.

259. Allowing "interested persons" to request a hearing increases public participation in matters of public importance: inactive wells present risks to nearby residents and risk public funds if orphaned. Benefits include, first, hearing from interested parties may provide additional information and valuable insight and perspectives to assist OCD in understanding potential impacts of TA and making an informed decision. Second, allowing public participation at critical points and decisions will provide greater transparency and accountability in the decision process. Third, public participation can add local concerns or expertise that may otherwise not be part of the OCD decision making process. Apps' Ex. 3 at 0091.

260. Allowing "interested persons" to participate in hearings is consistent with other New Mexico statutes and rules where such issues are at stake. *E.g.,* NMSA 1978, § 74-6-5(H) ("interested persons" may participate in permit hearing under Water Quality Act); 20.1.4.300.A(1) NMAC (allowing "[a]ny person" to participate in a permitting action before the New Mexico Environment Department under Air Quality Control Act, Hazardous Waste Act, and Solid Waste Act).

261. Notice through publication in a newspaper of general circulation is a standard and accepted form of public notice. *See, e.g.,* 19.15.3.9.A(6) NMAC (OCC requires newspaper notice for rulemakings).

262. **In conclusion, the revised proposal for placing and maintaining wells in TA at 19.15.25.13 NMAC is a balanced approach that (1) ensures that wells with no future beneficial use are plugged, (2) protects public health and the environment, (3) gives members of the public an opportunity to participate in matters that may impact public health and the environment, and (4) gives industry flexibility for future use of its assets.**

263. Applicants propose the following changes to 19.15.25.13.D, -E, and -F NMAC:

19.15.25.~~12.~~13

D.~~C.~~ An operator is limited to placing the following numbers of wells in approved temporary abandonment:

~~A.~~ **(1)** one well, if the operator operates between one and five wells; or

~~B.~~ **(2)** one-third of all wells (rounded to the nearest whole number), if the operator operates more than five wells.

E.~~D.~~ Implementation schedule for existing wells.

(1) Inactive wells (that are not in approved or expired temporary abandonment). Wells that have been inactive as of [effective date of amendments] for less than three years are eligible for temporary abandonment status in accordance with Subsection A of this Section. Wells that have been inactive for three or more years shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section.~~are not eligible for temporary abandonment status.~~

(2) Wells in approved temporary abandoned status. Any operator of a well in temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section prior to the date temporary abandonment status terminates. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

(3) Wells in expired temporary abandoned status. Any operator of a well in expired temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

F.~~E.~~ The timeframes Subsections A, ~~and~~ B and C in this Section shall be implemented consistent with any applicable federal requirements.

264. Aside from renumbering section numbers to align with proposed amendments, Applicants propose in Section 19.15.25.13.E NMAC an implementation schedule for the new TA process, which is composed of three categories: inactive wells (that are not in approved or expired TA status), wells in approved TA, and wells in expired TA. Apps' Ex. 3 at 0093.

265. For inactive wells, Applicants propose that wells that have been inactive for less than years are eligible to apply for TA status for five years under 19.15.25.13.A NMAC.

266. On July 3, 2025, there were **3,234 wells** on OCD's inactive well list that had been inactive between 15 months and three years and that were not in approved TA or subject to an agreed-to compliance order. While these wells are out of compliance, because their period of inactivity is not excessive and there is some possibility the wells will be put to beneficial use, Applicants propose that they may still be allowed to make the required demonstration that the well will be put to beneficial use in the future. If the operator cannot make that demonstration, the well must be plugged. Apps' Ex. 3 at 93.

267. As a result of negotiations, Applicants propose that wells that have been **inactive** for three or more years are eligible to apply for TA status for two years under 19.15.25.13.B NMAC. Applicants had originally proposed such wells not be eligible for TA and must be plugged. Wells that have been inactive more than three years and are not approved for TA are also out of compliance with OCC rules and the time period of noncompliance is more excessive. *Id.* at 0093-94. While those wells are much less likely to come back into productive use, in recognition of the significant changes in the rules, operators are allowed to try to make a showing the wells have future beneficial use.

268. Wells in **approved TA** are in compliance and would be allowed to remain TA status for the remainder of its five year TA period at which time the operator may return the well(s) to beneficial use, P&A, or apply to extend the TA status under 19.15.25.13.B NMAC above. There are approximately 419 wells in this status. *Id.* at 0094.

269. There are currently 155 wells in **expired TA** status. These wells are out of compliance, have been in TA status for at least five years, and the operator has a good idea of the

realistic destiny of these wells. Applicants propose the operator can either submit for a two year extension under 19.15.25.13.B NMAC, return the well to beneficial use, or plug the well(s) and restore the locations. According to Mr. Alexander, this proposal is "quite generous." *Id.*

270. Section 19.15.25.13.F NMAC was suggested by OCD to ensure that these state requirements do not conflict with federal requirements for P&A for federal wells. OCD coordinates with the U.S. Bureau of Land Management on P&A requirements subject to federal regulation. *Id.* at 0094-95.

6. Applicants' proposed amendments to 19.15.25.14 NMAC - request for approval and permit for approved temporary abandonment

271. Applicants proposed the following amendments to 19.15.25.14 NMAC:

19.15.25.~~13.~~14.A. An operator seeking approval for approved temporary abandonment shall submit the request on form C-103 ~~a notice of intent~~ to seek approved temporary abandonment for the well setting forth the demonstration required in 19.15.25.13~~12~~ NMAC and describing the proposed temporary abandonment procedure the operator will use. The operator shall not commence work until the division has approved the request. The operator shall give 24 hours' notice to the appropriate division district office before beginning work.

B. The division shall not approve a permit for approved temporary abandonment until the operator furnishes evidence demonstrating that the well's casing and cementing are mechanically and physically sound and in such condition as to prevent:

(1) damage to the producing zone;

(2) noncontainment of well bore fluids to the atmosphere or migration of hydrocarbons or water; the contamination of fresh water or other natural resources; and

(3) the leakage of a substance at the surface.

C. The operator shall demonstrate both internal and external mechanical integrity pursuant to Subsection A of 19.15.25.~~14~~15 NMAC.

D. Upon successful completion of the work on the temporarily abandoned well, the operator shall submit a request for approved temporary abandonment to the appropriate division district office on form C-103 together with other information Subsection E of 19.15.7.~~14~~15 NMAC requires.

E. The division shall not approve a permit for approved temporary abandonment until the operator provides financial assurance for the well that complies with Subsection D of 19.15.8.9 NMAC. The division shall specify the permit's expiration date~~, which shall be not more than five years from the date of approval.~~

272. Aside from changes to renumber section numbers to align with proposed amendments and minor clarifications, Applicants propose in 19.15.25.14.B(2) NMAC that operators demonstrate that a TA well's mechanical integrity is sufficient to prevent wellbore fluids from contaminating the atmosphere (in addition to current provisions protecting the producing zone and preventing migration of hydrocarbons or water, contamination of freshwater

or other natural resources or leakage of a substance to the surface). The measures an operator is required to take to place a well in TA status should already ensure no emissions to the atmosphere. Therefore, this addition clarifies and makes more complete the environmental protections in place for TA wells. *Id.* at 0097.

273. The proposed amendment in Subsection F – deleting reference to a five year permit term – is necessary to be consistent with Applicants' proposal for a two year renewal of TA status, after an initial five year period of TA. *Id.*

7. Applicants' proposed amendments to 19.15.25.15 NMAC - demonstrating mechanical integrity

274. Applicants propose the following amendments to 19.15.25.15 NMAC:

19.15.25.~~14~~15 DEMONSTRATING MECHANICAL INTEGRITY:

A. An operator may use the following methods of demonstrating internal casing integrity for wells to be placed in approved temporary abandonment, for wells for which approved temporary abandonment is to be renewed, and for wells for which an extension is to be granted:

(1) the operator may set a cast iron bridge plug within 100 feet of uppermost perforations or production casing shoe, load the casing with inert fluid and pressure test to 500 psi surface pressure with a pressure drop of not more than 10 percent over a 30 minute period;

(2) the operator may run a retrievable bridge plug or packer to within 100 feet of uppermost perforations or production casing shoe, and test the well to 500 psi surface pressure for 30 minutes with a pressure drop of not greater than 10 percent over a 30 minute period; or

(3) the operator may demonstrate that the well has been completed for less than five years ~~and has not been connected to a pipeline~~.

~~**(4)** Any isolation device used to test mechanical integrity pursuant to Subsection A of this Section shall remain in place for the duration of the temporary abandonment.~~

~~**(5)** The operator shall perform a caliper log and casing integrity log.~~

B. During the testing described in Paragraphs (1) and (2) of Subsection A of 19.15.25.~~14~~15 NMAC the operator shall:

(1) open all casing valves during the internal pressure tests and report a flow or pressure ~~change~~ occurring immediately before, during or immediately after the 30 minute pressure test;

(2) top off the casing with inert fluid prior to leaving the location; and

(3) report flow during the test in Paragraph (2) of Subsection A of 19.15.25.~~14~~15 NMAC to the appropriate division district office prior to completion of the temporary abandonment operations; the division may require remediation of the flow prior to approving the well's temporary abandonment.

(4) Any isolation device used to test mechanical integrity pursuant to Subsection A of this Section shall remain in place for the duration of the temporary abandonment.

(5) The operator shall perform a caliper log and casing integrity log. Taking into account the purpose and duration of the temporary abandonment, the division may waive this requirement upon a demonstration by the operator of the current and anticipated internal casing integrity of the well and that such integrity shall be maintained throughout the period of temporary abandonment.

C. An operator may use any method approved by the EPA in 40 C.F.R. section 146.8(c) to demonstrate external casing and cement integrity for wells to be placed in approved temporary abandonment.

D. The division shall not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal.

E. The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 1000 pound spring, which has been calibrated within the six months prior to conducting the test. Witnesses to the test shall sign the chart. The operator shall submit the chart, caliper log, and casing integrity log with form C-103 requesting approved temporary abandonment.

F. The division may approve other testing methods the operator proposes if the operator demonstrates that the test satisfies the requirements of Subsection B of 19.15.25.~~13~~14 NMAC.

275. Current OCC rules require a demonstration of mechanical integrity for wells to be placed in TA status. Originally recommended by OCD, Applicants propose requiring (1) running and submitting a caliper log and casing integrity log and (2) leaving in place during the TA period any device (*e.g.*, a cast iron bridge plug or retrievable plug) used to test a well's mechanical integrity. Apps' Ex. 3 at 0098-99.

276. The two logs are designed to evaluate the state of the casing, especially corrosion which is critical in wells that have corrosive elements in their produced fluids and gases. Operators should want to know if the casing is competent and if there is corrosion so any problem can be addressed before there is a major issue leading to a blowout underground causing contamination of nearby zones or worse. *Id.*

277. Leaving the device in place adds another layer of protection. Wells left in TA with the wellhead shut-in may sound safe but the downhole environment in anything but static, especially if corrosion is an issue. Plugging intervals that have been perforated and have residual pressure is prudent and ensures there is an additional barrier to protect from downhole contamination and safeguards environment and personnel in case of an unexpected failure. *Id.*

278. None of these proposed provisions is expensive. *Id.*

279. As a result of negotiations, in addition to numbering and non-substantive changes, Applicants propose giving OCD authority to waive the caliper and casing integrity log requirements but only if the operator can demonstrate that casing integrity is and will be maintained during the TA period.

280. As a result of negotiations, Applicants propose language at 19.15.25.15.A NMAC

clarifying that the mechanical integrity testing requirements must be completed prior to going into TA and prior to each time TA status is renewed or extended.

CONCLUSION

Based on the complete record, Applicants request the OCC to adopt Applicants and OCD's final proposals, supported by SLO and OXY (with two minor exceptions), in their entirety.

EXHIBIT 89

EXHIBIT 89-A

APPLICANTS' POST-HEARING PROPOSED AMENDMENTS TO 19.15.2 NMAC FINAL

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

(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 including ~~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.

(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 practicably 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

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

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 has had no production or injection for 12 consecutive months or is not being used for beneficial purposes including ~~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.

(6) "Low producing 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.

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) "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) "MCF" means 1000 cubic feet.

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

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

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

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

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

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

(10) "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) "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) "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, 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 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.

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".

(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]

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 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 89-B

APPLICANTS' POST-HEARING PROPOSED AMENDMENTS TO 19.15.5 NMAC FINAL

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 5 ENFORCEMENT AND COMPLIANCE

19.15.5.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.5.1 NMAC - N, 12/1/2008]

19.15.5.2 SCOPE: 19.15.5 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.5.2 NMAC - N, 12/1/2008]

19.15.5.3 STATUTORY AUTHORITY: 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, Section 70-2-12, Section 70-2-31 and Section 70-2-31.1 NMSA 1978.
[19.15.5.3 NMAC – N, 12/1/2008, A, 2/25/2020]

19.15.5.4 DURATION: Permanent.
[19.15.5.4 NMAC - N, 12/1/2008]

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

19.15.5.6 OBJECTIVE: To establish a process to ensure compliance with the Oil and Gas Act, division rules and division and commission orders.
[19.15.5.6 NMAC - N, 12/1/2008]

19.15.5.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.5.8 ENFORCEMENT OF STATUTES AND RULES: The division is charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas, including the prevention of waste and the protection of correlative rights, and the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations.
[19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/2008, A, 2/25/2020]

19.15.5.9 COMPLIANCE:

A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:

(1) currently meets the financial assurance requirements of 19.15.8 NMAC;

(2) is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;

(3) does not have a penalty assessment that is unpaid more than 30 days after issuance of the order assessing the penalty; ~~and~~

(4) currently meets the requirements of 19.15.25.8 NMAC~~; and has no more than the following number of wells out of compliance with 19.15.25.8 NMAC that are not~~ or is subject to an agreed compliance or final order setting a schedule for bringing the wells into compliance with 19.15.25.8 NMAC and imposing sanctions if the schedule is not met; and ~~:~~

~~**(a)** two wells or fifty percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;~~

~~**(b)** five wells if the operator operates between 101 and 500 wells;~~

~~**(c)** seven wells if the operator operates between 501 and 1000 wells; and~~

~~**(d)** 10 wells if the operator operates more than 1000 wells.~~

(5) currently meets the requirements of 19.15.27.8.A to -D NMAC.

B. Inactive wells.

(1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:

(a) shows no production or injection for past 14 ~~15~~ months or has had a final determination of no beneficial use under 19.15.25.9 NMAC;

(b) does not have its well bore plugged in accordance with 19.15.25.109 ~~9~~ NMAC through 19.15.25.1211 ~~11~~ NMAC;

(c) is not in approved temporary abandonment in accordance with 19.15.25.1312 ~~12~~ NMAC through 19.15.25.1514 ~~14~~ NMAC; and

(d) is not subject to an agreed compliance or final order setting a schedule for bringing the well into compliance with 19.15.25.8 NMAC.

(2) A well inactive for more than 14 ~~13~~ ~~15~~ months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

C. Financial assurance. The division shall make available on its website and update weekly the status of operators' financial assurance that 19.15.8 NMAC requires, according to division records.

[19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/2008; A, 11/30/2016, A, 2/25/2020]

19.15.5.10 ENFORCEMENT:

A. General. Whenever the division determines that a person violated or is violating the Oil and Gas Act or a provision of any rule, order, permit or authorization issued pursuant to the Oil and Gas Act, the division may seek a sanction by:

(1) issuing a temporary cessation order if it determines that the alleged violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The temporary cessation order shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

(2) issuing a notice of violation; or

(3) commencing a civil action in district court.

B. Sanctions. The division may seek one or more of the following sanctions:

(1) a civil penalty;

(2) modification, suspension, cancellation or termination of a permit or authorization;

(3) plugging and abandonment of a well;

(4) remediation and restoration of a well location and associated facilities, including the removal of surface and subsurface equipment and other materials;

(5) remediation and restoration of a location affected by a spill or release;

(6) forfeiture of financial assurance;

(7) shutting in a well or wells; and

(8) any other remedy authorized by law.

C. Notice of violation.

(1) A notice of violation issued by the division shall state with reasonable specificity:

(a) the identity of the alleged violator;

(b) the nature and factual and legal basis of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;

(c) whether compliance is required immediately or within a specified time period;

(d) the sanction(s) available for the alleged violation, the sanction(s) proposed by the division, and a statement that the division will take into consideration the violators good faith efforts to comply with the applicable requirements;

(e) the availability of a process for informal review and resolution of the alleged violation, and the procedure to initiate the informal review process, including the contact information of the appropriate division employee;

(f) a statement that if the notice of violation is not informally resolved within 30 days of service, the division will hold a hearing, but that the hearing shall not prohibit the parties from negotiating and settling the notice of violation at any time; and

(g) the date of the hearing, which shall be no later than 90 days after the date of the notice of violation.

(2) The division shall serve the notice of violation on the alleged violator by certified mail, and may provide the notice of violation by electronic mail if possible.

(3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives the alleged violator's right of review by the commission.

(4) If the division and the alleged violator fail to enter a stipulated final order within 30 days

of service, the division shall hold a hearing at the division's principal office.

D. Civil penalties. A civil penalty assessed by the division shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of noncompliance under the Oil and Gas Act and other relevant factors. The civil penalty assessed by the division shall not exceed $2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed $10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed $200,000.

E. Adjudicatory procedures. These adjudicatory procedures shall apply to hearings on temporary cessation orders and notices of violation before the division, and the provisions of 19.15.4 NMAC shall not apply.

(1) General provisions.

(a) Designation of parties. The parties shall be the division and the person served with a notice of violation or order, referred to herein as "respondent".

(b) Representation. Respondent may appear and participate in a hearing either pro se or through counsel, provided that a collective entity, including a corporation, partnership, unincorporated association, political subdivision or governmental agency shall appear only through counsel or a duly authorized officer or member.

(c) Rule applicability. In the absence of a specific provision in this section, the hearing examiner may apply the New Mexico rules of civil procedure and evidence.

(d) Computation of time. In computing any period of time under 19.15.5.10 NMAC the day of the event from which the designated period begins to run shall not be included, and the last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which case the time is extended until the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service, and service is by first class mail only, three days is added to the prescribed period.

(e) Extensions of time. The hearing examiner may grant an extension of time to file a document or continue a hearing upon timely motion upon consent of the parties, or for good cause shown after consideration of prejudice to the other party and undue delay to the hearing.

(f) Filing of documents. A party shall file the original of each document and serve a copy on the other party, accompanied by a certificate of service identifying the method and address used to complete service.

(g) Service of documents. A party shall serve each document on the other party or its counsel, as applicable, by personal service or first class mail, or by electronic mail if the parties agree.

(h) Form of documents. Unless otherwise ordered, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, shall contain the caption of the notice of violation or temporary cessation order on the first page and shall be signed by the party or its counsel, as applicable.

(2) Pre-hearing procedures.

(a) Docketing. At the expiration of the 30 day period for informal resolution of a notice of violation, when a party appeals a final order under Subsection E of 19.15.5.10 NMAC, or when the division gives notice that it intends to extend a temporary cessation order, the division shall docket the notice of violation or order for hearing, identify the factual basis for the alleged violation and proposed sanction(s), and serve a notice of docketing on respondent.

(b) Answer. No later than 10 days after service of the notice of docketing, respondent shall file an answer stating its objection, if any, and the factual and legal basis for such objection, to each alleged violation and proposed sanction in the notice of violation or order.

(c) Hearing examiner. The hearing examiner shall have the authority to take all measures necessary to conduct a fair, impartial and efficient adjudication of issues, and to maintain order and avoid undue delay, including the authority to conduct pre-hearing conferences and hearings, rule on procedural and evidentiary motions, govern the examination of witnesses and the admission of evidence, issue orders and prepare a recommended decision. After the division issues the notice of violation, the hearing examiner shall not discuss ex parte the merits of the proceeding with the division or the respondent.

(d) Pre-hearing conference. The hearing examiner may hold a pre-hearing conference to narrow the issues, eliminate or resolve preliminary matters and encourage settlement, and may issue a pre-hearing order on procedural and evidentiary matters, including a schedule for the filing of motions and testimony, stipulations regarding alleged violations and requested relief, including proposed civil penalties or

elements thereof, and any other matter necessary for the efficient conduct of the hearing.

(e) Pre-hearing statements. No later than seven calendar days before the hearing, a party who intends to present evidence at the hearing shall file and serve a statement that contains the following information:

(i) the name, address, employment and qualifications, including education and work history, of each witness;

(ii) a statement identifying the opinions and factual assertions supporting each witness' testimony;

(iii) the exhibits and other evidence to be presented by each witness; and

(iv) procedural matters that are to be resolved prior to the hearing.

(f) Enforcement. The hearing examiner may enforce the requirements of 19.15.5.10 NMAC by any appropriate means, including the exclusion of testimony, exhibits and other evidence.

(g) Motions.

(i) General. All motions, except motions made orally during the hearing, shall be in writing, specify the grounds for the motion, state the relief sought, indicate whether the motion is opposed or unopposed and be served on the other party.

(ii) Unopposed motions. An unopposed motion shall state that concurrence of the other party was obtained and shall be accompanied by a proposed order approved by the parties.

(iii) Opposed motions. An opposed motion shall state either that concurrence was sought and not obtained, or the reason that concurrence was not sought.

(iv) Response. No later than 10 days after service of an opposed motion, the opposing party may file a response. Failure to file a response shall be deemed a waiver of any objection to the granting of the motion.

(v) Reply. No later than 10 days after service of a response to an opposed motion, the moving party may file a reply.

(vi) Decision. The hearing examiner shall decide all motions without a hearing, unless otherwise ordered by the hearing examiner sua sponte or upon written request of a party.

(h) Shortening Deadlines. On the written request of the alleged violator showing good cause, the hearing examiner may shorten the deadlines specified in Paragraph (2) of Subsection E of 19.15.10 NMAC to conduct the hearing on the division's application for a temporary cessation order as expeditiously as possible. If the division opposes the request to shorten deadlines, the procedures for opposed motions set forth in Subparagraph (g) of Paragraph (2) of Subsection G of 19.15.5.10 NMAC shall not apply and the hearing examiner shall decide the request, with or without hearing, as quickly as practicable.

(3) Hearing procedures.

(a) General. The hearing examiner shall admit all evidence, unless he or she determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded by the New Mexico rules of evidence is not admissible.

(b) Witness examination. Witnesses shall be examined orally and under oath or affirmation, provided that the parties may stipulate to the admission of the testimony of a witness, or part thereof. Parties shall have the right to cross-examine a witness, provided that the hearing examiner may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony.

(c) Exhibits. A party shall label each exhibit used during the hearing or offered into evidence with a designation identifying the party, the witness using or offering the exhibit and a serial number.

(d) Burden of persuasion. The division has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the alleged violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

(4) Post-hearing procedures.

(a) Transcript. The hearing shall be transcribed verbatim. Respondent may order a copy of the transcript from the reporter at its own expense.

(b) Recommended decision. The hearing examiner shall prepare a recommended decision for review by the director.

(c) Final order. The director shall file a final order addressing the material issues of fact and law and may assess a sanction for each alleged violation, which shall be served on the division and the respondent.

F. Commission review. No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. The commission shall conduct a de novo review, provided however, that the parties may stipulate to the issues to be heard and to the admission of all or part of the record before the division. The commission shall conduct the hearing in accordance with the adjudicatory procedures in Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2), Paragraph (3) and Subparagraph (a) of Paragraph (4) of Subsection E of 19.15.5.10 NMAC.

G. Rehearings. A party may file an application for rehearing with the commission pursuant to Section 70-2-25 NMSA 1978.

H. Payment of civil penalty. Respondent shall pay the full amount of the civil penalty assessed in the final order (i) no later than 30 days after the director serves the final order, or (ii) if respondent files a notice of appeal to the commission or the district court pursuant to Section 70-2-25 NMSA 1978, no later than 30 days after the commission or the district court files a final order or the appeal is withdrawn.

I. Resolution after commencement of hearing. If the parties agree to resolve a notice of violation at any time after the commencement of a hearing, they shall file a stipulated final order signed by both parties. The stipulated final order shall state that respondent admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives respondent's right of review by the commission or the court, as applicable.

J. Publication. On or about October 1 of each year, the division shall publish a list identifying the temporary cessation orders and notices of violation issued during the preceding year, along with the civil penalty paid, if any.

K. Reservation. Nothing in 19.15.5.10 NMAC precludes the division from bringing any other action and seeking any relief allowed by the Oil and Gas Act.

[19.15.5.10 NMAC – Rp, 19.15.5.10 NMAC, 2/25/2020]

19.15.5.11 **ENFORCEABILITY OF PERMITS AND ADMINISTRATIVE ORDERS:** A person who conducts an activity pursuant to a permit, administrative order or other written authorization or approval from the division shall comply with every term, condition and provision of the permit, administrative order, authorization or approval.

[19.15.5.11 NMAC - Rp, 19.15.1.41 NMAC, 12/1/2008]

HISTORY of 19.15.5 NMAC:

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

NMAC History:

Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 12, 40 & 41) (filed 04/27/2001) and 19.15.14 NMAC, Procedure (Section 1227) (filed 09/16/2005), were replaced by 19.15.5 NMAC, Enforcement and Compliance, effective 12/1/2008.

EXHIBIT 89-C

APPLICANTS' POST-HEARING PROPOSED AMENDMENTS TO 19.15.8 NMAC FINAL

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 operating authority under 19.15.9.9 NMAC, is drilling or proposes to drill or acquire operating authority under 19.15.9.9 NMAC 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 under 19.15.9.9 NMAC until the operator has furnished the required financial assurance. This Subsection A applies to Subsections B through H of this Section.

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:

(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. Low producing ~~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 low producing ~~marginal~~ well prior to transfer.

(2) Beginning May 1, 2029, ~~January 1, 2028,~~ an operator shall provide a one well plugging financial assurance for each low producing ~~marginal~~ well. Each operator with a low producing ~~marginal~~ well or wells shall annually review the number of low producing ~~marginal~~ wells registered to the operator and shall update the one well plugging financial assurance by May 1 of each year.

(3) An operator of a low producing well may request a variance to the one well plugging financial assurance requirement of $150,000 upon a demonstration satisfactory to the division that there is a physical impediment limiting the well's midstream take away capacity. A demonstration shall include a certification from the operator detailing the nature of the physical impediment, explaining why the physical impediment is outside the control of the operator, detailing the alternatives that were or are being explored to address the lack of take away capacity, and an estimated date when the lack of take away capacity will be corrected. The demonstration shall also include the notification from the midstream operator required pursuant to 19.15.28.8.D NMAC.

~~**(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. Operators with 20 percent or more of wells in inactive, approved temporarily abandoned or expired temporarily abandoned status.

(1) Beginning May 1, 2029, an operator with 20 percent or more of their wells in inactive status, approved temporarily abandoned status or expired temporarily abandoned 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 wells in such statuses is decreased below 20 percent. Each operator with wells in this financial assurance category shall annually review the number of wells in inactive status, approved temporarily abandoned status and expired temporarily abandoned status registered to the operator and shall update the one well plugging financial assurance by May 1 of each year.

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

F.~~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 F~~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.~~

G.~~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.~~

H.~~G.~~ Beginning ~~On~~ January 1, 203228, ~~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, 203127 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 203026; 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 producer price index. By November 1, 203127 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. The division may adjust the applicable financial assurance amounts in accordance with this Section but may not do so more frequently than three years from the date of the last adjustment.

[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 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 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.

EXHIBIT 89-D

APPLICANTS' POST-HEARING AMENDMENTS TO 19.15.9 NMAC
FINAL

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 9 WELL OPERATOR PROVISIONS

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

19.15.9.2 SCOPE: 19.15.9 NMAC applies to persons or entities operating oil or gas wells within New Mexico.
[19.15.9.2 NMAC - N, 12/1/08]

19.15.9.3 STATUTORY AUTHORITY: 19.15.9 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.
[19.15.9.3 NMAC - N, 12/1/08]

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

19.15.9.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section. [19.15.9.5 NMAC - N, 12/1/08]

19.15.9.6 OBJECTIVE: To require an operator of a well or wells to register with the division prior to commencing operations and to require the reporting of a change of operator or a change of name to the division. [19.15.9.6 NMAC - N, 12/1/08]

19.15.9.7 DEFINITIONS:[RESERVED]
[See 19.15.2 NMAC for definitions.]
[19.15.9.7 NMAC - N, 12/1/08]

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 a representative designated by the operator ~~an authorized official~~ ~~officer, director, or partner~~ that within the past ten years the new operator has not been ~~is not~~ subject to any final administrative forfeiture demand~~s~~ from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and has not been ~~is not~~ out of compliance with ~~does not have~~ an ~~unresolved~~ adjudicated order~~s~~ or ~~unresolved~~ settlement agreement~~s~~ with a state or federal agency for any state or federal violation~~s~~ related to oil and gas laws or regulations ~~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 within the past ten years has had a final administrative forfeiture demand~~s~~ from any state or federal agency, has forfeited financial assurance to any state or federal agency, or has been ~~is~~ out

of compliance with ~~has unresolved~~ an adjudicated orders or ~~unresolved~~ settlement agreements~~s~~ with a state or federal agency for any state or federal violation related to oil and gas laws or regulations ~~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;

(~~2~~3) an officer, director, partner in the applicant or person with an interest in the applicant exceeding 25 percent, 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;

(~~3~~4) the applicant 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; or

(4~~5~~) the applicant is a corporation, ~~or~~ limited liability company, limited liability limited partnership, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state ~~public regulation commission~~ to do business in New Mexico.~~; or~~

~~**(5)** the applicant is a limited partnership and is not registered with the New Mexico secretary of state to do business in New Mexico.~~

~~C.~~D. An operator shall inform the division of its current address of record and emergency contact names and telephone numbers by submitting changes in writing to the division's financial assurance administrator in the division's Santa Fe office within 30 days of the change.

~~D.~~E. ~~The division may require an~~ A~~n~~ representative designated by the operator shall ~~or applicant to~~ certify compliance annually of ~~identify~~ its current and past officers, directors and partners and its current and past ownership interest in other operators consistent with 19.15.9.8.C(2) and (3) NMAC.

[19.15.9.8 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.9 CHANGE OF OPERATOR:

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 a representative designated by the operator ~~an authorized official~~ ~~officer, director, or partner~~ of the new operator that within the past ten years the new operator has not been ~~is not~~ subject to any final administrative forfeiture demand~~s~~ from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and has not been out of compliance with ~~does not have unresolved~~ an adjudicated orders or ~~unresolved~~ settlement agreements with a state or federal agency for any state or federal violation~~s~~ related to oil and gas laws or regulations ~~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 a representative designated by ~~an authorized official~~ ~~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) within the past ten years the new operator has had a final administrative forfeiture demands from any state or federal agency, has forfeited financial assurance to any state or federal agency, or has been out of compliance with ~~has unresolved~~ an adjudicated orders or ~~unresolved~~ settlement agreements with a state or federal agency for any state or federal violations related to oil and gas laws or regulations ~~is out of compliance with federal and state oil and gas laws and regulations~~ in any domestic jurisdiction ~~each state~~ in which the new operator does business;

(3) 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;

(4) 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;

(5) the applicant is a corporation, limited liability company, limited liability limited partnership, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state to do business in New Mexico; or

(6) the certification or disclosure requirements set forth in Subsection B of this Section disclose a substantial risk that the new operator would be unable to satisfy the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells the new operator intends to take over.

D. In determining whether to grant or deny a change of operator when the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC, the director or the director's designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having ~~more than the allowed number of~~ wells out of compliance with 19.15.25.8 NMAC. If the non-compliance is caused by the operator having ~~more than the allowed number of~~ wells not in compliance with 19.15.25.8 NMAC, the director or director's designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

E. No well, facility or site that is out of compliance with Subsection A of 19.15.5.9 NMAC, 19.15.29 NMAC, or 19.15.30 NMAC shall be transferred unless, prior to transfer, the current operator brings the associated well, facility or site into compliance or the new operator submits a schedule of compliance approved by the division.

[19.15.9.9 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.10 CHANGE OF NAME:

A. A change of operator name occurs when the name of the entity responsible for a well or wells changes but the entity does not change. For a change of name, the OGRID number remains the same, but division records are changed to reflect the new operator name.

B. An operator shall apply for a change of name by filing a form C-146 using the division's web-based online application and supplying documentary proof that the change is a name change and not a change of operator. If the operator is a corporation, limited liability company or limited partnership, the name must be registered with the public regulation commission or the New Mexico secretary of state, as applicable. The division shall not approve a change of name until the state land office and the taxation and revenue department have cleared the change of name on the OGRID.

[19.15.9.10 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.11 EXAMPLES OF CHANGE OF OPERATOR AND CHANGE OF NAME:

A. Mr. Smith, a sole proprietor, operates five wells under the name "Smith oil company". Mr. Smith changes the name of his company to "Smith production company". The name of the entity operating the wells has changed, but the entity has not changed. Mr. Smith should apply for a change of name.

B. Mr. Smith incorporates his business, changing from the sole proprietorship, "Smith production company", to a corporation: "Smith production company, inc.". The entity responsible for the wells

has changed, and Mr. Smith and "Smith production company, inc." should apply for a change of operator.

C. Smith production company, inc., a New Mexico operator, merges with XYZ, inc., which does not operate in New Mexico. At the surviving entity's election, this transaction may be treated as a change of name from Smith production company, to XYZ, inc., maintaining the existing OGRID, or as a change of operator, with a new OGRID.

D. Two New Mexico operators, Smith production company, inc. and Jones production company, inc., merge. The surviving corporation is Jones production company, inc. A different entity now operates the wells Smith production company, formerly operated, and the wells must be placed under that entity's OGRID. Jones production company, inc. and Smith production company, inc. should apply for a change of operator as to the wells Smith production company, inc. operated.

[19.15.9.11 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

HISTORY of 19.15.9 NMAC:

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

NMAC History:
That applicable portion of 19.15.3 NMAC, Drilling (Section 100) (filed 11/30/2005) was replaced by 19.15.9 NMAC, Well Operator Provisions, effective 12/1/08.

EXHIBIT 89-E

APPLICANTS' POST-HEARING PROPOSED AMENDMENTS TO 19.15.25 NMAC FINAL

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 25 PLUGGING AND ABANDONMENT OF WELLS

19.15.25.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.25.1 NMAC - Rp, 19.15.4.1 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.2 SCOPE: 19.15.25 NMAC applies to persons that operate oil or gas wells within New Mexico.
[19.15.25.2 NMAC - Rp, 19.15.4.2 NMAC, 12/1/2008]

19.15.25.3 STATUTORY AUTHORITY: 19.15.25 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-12 NMSA 1978, which authorizes the division to require dry or abandoned wells to be plugged so as to confine oil, gas or water in the strata in which they are found and to prevent them from escaping into other strata.
[19.15.25.3 NMAC - Rp, 19.15.4.3 NMAC, 12/1/2008]

19.15.25.4 DURATION: Permanent.
[19.15.25.4 NMAC - Rp, 19.15.4.4 NMAC, 12/1/2008]

19.15.25.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of asection.
[19.15.25.5 NMAC - Rp, 19.15.4.5 NMAC, 12/1/2008]

19.15.25.6 OBJECTIVE: To establish requirements for properly abandoning and plugging wells drilled for oil or gas or service wells including seismic, core, exploration or injection wells or placing the wells in temporary abandonment in order to protect public health, fresh water and the environment.
[19.15.25.6 NMAC - Rp, 19.15.4.6 NMAC, 12/1/2008]

19.15.25.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.25.8 WELLS TO BE PROPERLY ABANDONED:

A. The operator of wells drilled for oil or gas or services wells including seismic, core, exploration or injection wells, whether cased or uncased, shall plug the wells as Subsection B of 19.15.25.8 NMAC requires.

B. The operator shall either properly plug and abandon a well or apply to the division to place the well in approved temporary abandonment in accordance with 19.15.25 NMAC within ~~90~~ 60 days after:

(1) a 60 day period following suspension of drilling operations, except a well that has been drilled and properly cased but not completed for less than 18 months and a well that has been completed but has not produced for less than 18 months, unless the well is a dry hole;

(2) a determination that a well is no longer usable for beneficial purposes; or

(3) a period of one year in which a well has been continuously inactive.

[19.15.25.8 NMAC - Rp, 19.15.4.201 NMAC, 12/1/2008]

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 presumed to not being used for beneficial purposes, a well operator may submit an application for administrative review ~~of such determination through~~ to 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. An operator may file ~~request~~ an application for hearing within 30 days of the

division's ~~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) A demonstration ~~Documentation demonstrating~~ that the well is reasonably projected to produce in an economically beneficial manner ~~paying quantities~~; ~~and~~

(2) A demonstration that the well has effectively produced or injected at least 90 days within the consecutive 12 month period and there is no downhole mechanical integrity problem;

(3) A demonstration ~~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~~

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

(5) Other relevant information requested by the division or provided by the operator or a regulatory agency.

E. This Subsection shall become effective 12 months after [the effective date of this rule], except that as to operators that the division determines are substantially out of compliance with 19.15.7.24 NMAC, 19.15.8.9 NMAC, or 19.15.25.8 NMAC, this Subsection shall become effective on [the effective date of this rule].

19.15.25.~~9~~10 NOTICE OF PLUGGING:

A. The operator shall file notice of intention to plug with the division on form C-103 prior to commencing plugging operations. The notice shall provide all the information 19.15.7.14 NMAC requires including operator and well identification and proposed procedures for plugging the well.

B. In addition, the operator shall provide a well bore diagram showing the proposed plugging procedure.

C. The operator shall notify the division 24 hours prior to commencing plugging operations. In the case of a newly drilled dry hole, the operator may obtain verbal approval from the appropriate district supervisor or the district supervisor's representative of the plugging method and time operations are to begin. The operator shall file written notice in accordance with 19.15.25.~~11~~12 NMAC with the division within 10 days after the district supervisor has given verbal approval.

[19.15.25.9 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.~~10~~11PLUGGING:

A. Before an operator abandons a well, the operator shall plug the well in a manner that permanently confines all oil, gas and water in the separate strata in which they are originally found. The operator may accomplish this by using mud-laden fluid, cement and plugs singly or in combination as approved by the division on the notice of intention to plug.

B. The operator shall mark the exact location of plugged and abandoned wells with a steel marker not less than four inches in diameter set in cement and extending at least four feet above mean ground level. The operator name, lease name and well number and location, including unit letter, section, township and range, shall be welded, stamped or otherwise permanently engraved into the marker's metal. A person shall not build permanent structures preventing access to the wellhead over a plugged and abandoned well without the division's written approval. A person shall not remove a plugged and abandonment marker without the division's written approval.

C. The operator may use below-ground plugged and abandonment markers only with the division's written approval when an above-ground marker would interfere with agricultural endeavors. The below-ground marker shall have a steel plate welded onto the abandoned well's surface or conductor pipe and shall be at least three feet below the ground surface and of sufficient size so that all the information 19.15.16.8 NMAC requires can be stenciled into the steel or welded onto the steel plate's surface. The division may require a re-survey of the well location.

D. As soon as practical, but no later than one year after the completion of plugging operations, the operator shall:

(1) level the location;

(2) remove deadmen and other junk; and

(3) take other measures necessary or required by the division to restore the location to a safe and clean condition.

E. The operator shall close all pits and below-grade tanks pursuant to 19.15.17 NMAC.

F. Upon completion of plugging and clean up restoration operations as required, the operator shall contact the appropriate division district office to arrange for an inspection of the well and location.

APPLICANTS' POST-HEARING PROPOSED AMENDMENTS TO 19.15.25 NMAC FINAL

[19.15.25.10 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.~~11~~12 REPORTS FOR PLUGGING AND ABANDONMENT:

A. The operator shall file form C-105 as provided in 19.15.7.16 NMAC.

B. Within 30 days after completing required restoration work, the operator shall file with the division a record of the work done on form C-103 as provided in 19.15.7.14 NMAC.

C. The division shall not approve the record of plugging or release a bond until the operator has filed necessary reports and the division has inspected and approved the location.

[19.15.25.11 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.~~12~~13 APPROVED TEMPORARY ABANDONMENT:

A. The division may place a well in approved temporary abandonment for a period of up to five years upon a demonstration from the operator that the well will be used for beneficial use within the approved period of temporary abandonment.

(1) The operator's demonstration shall include an explanation why the well should be placed in temporary abandonment, how the well will be put to beneficial use in the future including supporting technical ~~and economic~~ data, a plan that describes the ultimate disposition of the well, and the time frame for that disposition.~~, and~~

(2) The operator shall provide any other information the division determines appropriate, including a current and complete well bore diagram; geological evidence; geophysical data; well casing information; waste removal and disposition; production engineering; geophysical logs, e.g., cement bond logs, caliper logs, and casing inspection logs; economic data; and health, safety, and environmental information.

(3) If the division denies a request, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

B. Prior to the expiration of an approved temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location, or apply for a new approval to temporarily abandon the well for a period of up to two years in accordance with 19.15.25.13.A NMAC and ~~shall~~ demonstrate the well's mechanical integrity in accordance with Sections 19.15.25.14 and -15 NMAC~~ to the division to extend temporary abandonment status pursuant to the procedures for adjudicatory proceedings in 19.15.4 NMAC, except that in any such adjudicatory proceeding any interested person may intervene under 19.15.4.11.A NMAC. To continue in temporary abandonment, the operator must demonstrate to the division that the well will be returned to beneficial use within the requested period of temporary abandonment. The request shall include documentation demonstrating why the well should remain in temporary abandonment; documentation demonstrating why the well was not brought back to beneficial use or plugged and abandoned during the period of temporary abandonment; documentation demonstrating how the well will be put to beneficial use in the future and supporting technical and economic data; a plan that describes the ultimate disposition of the well, the time frame for that disposition; and a health and safety plan demonstrating the well's casing and cementing meet the requirements of Subsections B and C of Section 19.15.25.13 NMAC and the operator has adequate monitoring procedures in place to ensure such requirements will be met.~~ A second ~~An extended~~ term shall not exceed two additional years, upon which time the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

C. Extension.

(1) Prior to the expiration of a renewal of an approved temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location, or apply for an extension to continue to place the well in temporary abandonment for a period of up to five years.

(2) To obtain an extension, the operator shall apply to the division to extend temporary abandonment status. The division shall provide at least 30 days' notice of the application for extension on its website and to the division mailing list, and the operator shall provide at least 30 days' notice of the application for extension in a newspaper of general circulation. The operator, division, or any interested person may request a hearing on the application for extension before the division. Any such hearing shall be conducted pursuant to the procedures for adjudicatory proceedings in 19.15.4 NMAC, except that in any such adjudicatory proceeding any interested person may intervene under 19.15.4.11.A NMAC. If a hearing is not requested, the division shall proceed with processing the application for extension.

(a) ~~**(3)**~~ To obtain an extension, the operator shall demonstrate to the division that the well has future beneficial use.

(b) The application for extension shall include:

(i) a plan of development for the well that includes documentation that the plan is technically feasible and financially viable;

(ii) a description of any work completed and in progress under ~~on~~ the plan of development;~~.~~

(iii) documentation demonstrating why the well was not brought back to beneficial use as had been proposed or plugged and abandoned during the prior period of temporary abandonment;

(iv) a plan that describes the ultimate disposition of the well including ~~:~~ the time frame for that disposition; and

(v) documentation demonstrating the well's casing and cementing meet the requirements Sections 19.15.25.14 and -15 NMAC and that monitoring procedures are in place to ensure such requirements will be met and maintained during the period of temporary abandonment.

(c) The operator shall provide any other relevant information requested by the division including engineering information, geological information, financial information, and applicable contracts that support the future beneficial use.

(4) An operator may reapply for an extension for periods of up to five years under the same terms and conditions as provided for in this Subsection. If the division denies a request for extension, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

D.~~C.~~ An operator is limited to placing the following numbers of wells in approved temporary abandonment:

~~A.~~(1) one well, if the operator operates between one and five wells; or

~~B.~~(2) one-third of all wells (rounded to the nearest whole number), if the operator operates more than five wells.

E.~~D.~~ Implementation schedule for existing wells.

(1) Inactive wells (that are not in approved or expired temporary abandonment). Wells that have been inactive as of [effective date of amendments] for less than three years are eligible for temporary abandonment status in accordance with Subsection A of this Section. Wells that have been inactive for three or more years shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section.~~are not eligible for temporary abandonment status.~~

(2) Wells in approved temporary abandoned status. Any operator of a well in temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section prior to the date temporary abandonment status terminates. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

(3) Wells in expired temporary abandoned status. Any operator of a well in expired temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

F.~~E.~~ The timeframes Subsections A, ~~and~~ B and C in this Section shall be implemented consistent with any applicable federal requirements.

[19.15.25.12 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.~~13~~14 REQUEST FOR APPROVAL AND PERMIT FOR APPROVED TEMPORARY ABANDONMENT:

A. An operator seeking approval for approved temporary abandonment shall submit the request on form C-103 ~~a notice of intent~~ to seek approved temporary abandonment for the well setting forth the demonstration required in 19.15.25.13~~12~~ NMAC and describing the proposed temporary abandonment procedure the operator will use. The operator shall not commence work until the division has approved the request. The operator shall give 24 hours' notice to the appropriate division district office before beginning work.

B. The division shall not approve a permit for approved temporary abandonment until the operator furnishes evidence demonstrating that the well's casing and cementing are mechanically and physically sound and in such condition as to prevent:

(1) damage to the producing zone;

(2) noncontainment of well bore fluids to the atmosphere or migration of hydrocarbons or water;

(3) the contamination of fresh water or other natural resources; and

(4) the leakage of a substance at the surface.

C. The operator shall demonstrate both internal and external mechanical integrity pursuant to Subsection A of 19.15.25.~~14~~15 NMAC.

D. Upon successful completion of the work on the temporarily abandoned well, the operator shall submit a request for approved temporary abandonment to the appropriate division district office on form C-103 together with other information Subsection E of 19.15.7.~~14~~15 NMAC requires.

E. The division shall not approve a permit for approved temporary abandonment until the operator provides financial assurance for the well that complies with Subsection D of 19.15.8.9 NMAC.

F. The division shall specify the permit's expiration date~~., which shall be not more than five years from the date of approval.~~

[19.15.25.13 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.~~14~~15 DEMONSTRATING MECHANICAL INTEGRITY:

A. An operator may use the following methods of demonstrating internal casing integrity for wells to be placed in approved temporary abandonment, for wells for which approved temporary abandonment is to be renewed, and for wells for which an extension is to be granted:

(1) the operator may set a cast iron bridge plug within 100 feet of uppermost perforations or production casing shoe, load the casing with inert fluid and pressure test to 500 psi surface pressure with a pressure drop of not more than 10 percent over a 30 minute period;

(2) the operator may run a retrievable bridge plug or packer to within 100 feet of uppermost perforations or production casing shoe, and test the well to 500 psi surface pressure for 30 minutes with a pressure drop of not greater than 10 percent over a 30 minute period; or

(3) the operator may demonstrate that the well has been completed for less than five years ~~and has not been connected to a pipeline~~.

~~**(4)** Any isolation device used to test mechanical integrity pursuant to Subsection A of this Section shall remain in place for the duration of the temporary abandonment.~~

~~**(5)** The operator shall perform a caliper log and casing integrity log.~~

B. During the testing described in Paragraphs (1) and (2) of Subsection A of 19.15.25.~~14~~15 NMAC the operator shall:

(1) open all casing valves during the internal pressure tests and report a flow or pressure ~~change~~ occurring immediately before, during or immediately after the 30 minute pressure test;

(2) top off the casing with inert fluid prior to leaving the location; and

(3) report flow during the test in Paragraph (2) of Subsection A of 19.15.25.~~14~~15 NMAC to the appropriate division district office prior to completion of the temporary abandonment operations; the division may require remediation of the flow prior to approving the well's temporary abandonment.

(4) Any isolation device used to test mechanical integrity pursuant to Subsection A of this Section shall remain in place for the duration of the temporary abandonment.

(5) The operator shall perform a caliper log and casing integrity log. Taking into account the purpose and duration of the temporary abandonment, the division may waive this requirement upon a demonstration by the operator of the current and anticipated internal casing integrity of the well and that such integrity shall be maintained throughout the period of temporary abandonment.

C. An operator may use any method approved by the EPA in 40 C.F.R. section 146.8(c) to demonstrate external casing and cement integrity for wells to be placed in approved temporary abandonment.

D. The division shall not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal.

E. The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 1000 pound spring, which has been calibrated within the six months prior to conducting the test. Witnesses to the test shall sign the chart. The operator shall submit the chart, caliper log, and casing integrity log with form C-103 requesting approved temporary abandonment.

F. The division may approve other testing methods the operator proposes if the operator demonstrates that the test satisfies the requirements of Subsection B of 19.15.25.~~13~~14 NMAC.

[19.15.25.14 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008]

19.15.25.~~15~~16 WELLS TO BE USED FOR FRESH WATER:

A. When a well to be plugged may safely be used as a fresh water well and the landowner agrees to take over the well for that purpose, the operator does not need to plug the well above the sealing plug set below the fresh water formation.

B. The operator shall comply with other requirements contained in 19.15.25.~~9~~10 NMAC through 19.15.25.~~11~~12 NMAC regarding plugging, including surface restoration and reporting requirements.

C. Upon completion of plugging operations, the operator shall file with the division a written agreement signed by the landowner whereby the landowner agrees to assume responsibility for the well. Upon the filing of this agreement and division approval of well abandonment operations, the operator is no longer responsible for the well, and the division may release bonds on the well.

[19.15.25.15 NMAC - Rp, 19.15.4.204 NMAC, 12/1/2008]

HISTORY of 19.15.25 NMAC:

History of Repealed Material: 19.15.4 NMAC, Plugging and Abandonment of Wells (filed 11/29/2001) repealed 12/1/2008.

NMAC History:

19.15.4 NMAC, Plugging and Abandonment of Wells (filed 11/29/2001) was replaced by 19.15.25 NMAC, Plugging and Abandonment of Wells, effective 12/1/2008.

EXHIBIT 90

EXHIBIT 90-A

APPLICANTS' POST-HEARING PROPOSED AMENDMENTS TO 19.15.2 NMAC
FINAL

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

(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 including production, injection or monitoring.

~~(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.

(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 practicably 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 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 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 has had no production or injection for 12 consecutive months or is not being used for beneficial purposes including ~~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.

(6) **"Low producing 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.

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) **"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) **"MCF"** means 1000 cubic feet.

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

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

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

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

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

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

(10) **"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) **"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)——"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,

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

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.

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".

(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]

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

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 90-B

APPLICANTS' POST-HEARING PROPOSED AMENDMENTS TO 19.15.5 NMAC FINAL

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 5 ENFORCEMENT AND COMPLIANCE

19.15.5.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.5.1 NMAC - N, 12/1/2008]

19.15.5.2 SCOPE: 19.15.5 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.5.2 NMAC - N, 12/1/2008]

19.15.5.3 STATUTORY AUTHORITY: 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, Section 70-2-12, Section 70-2-31 and Section 70-2-31.1 NMSA 1978.
[19.15.5.3 NMAC – N, 12/1/2008, A, 2/25/2020]

19.15.5.4 DURATION: Permanent.
[19.15.5.4 NMAC - N, 12/1/2008]

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

19.15.5.6 OBJECTIVE: To establish a process to ensure compliance with the Oil and Gas Act, division rules and division and commission orders.
[19.15.5.6 NMAC - N, 12/1/2008]

19.15.5.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.5.8 ENFORCEMENT OF STATUTES AND RULES: The division is charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas, including the prevention of waste and the protection of correlative rights, and the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations.
[19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/2008, A, 2/25/2020]

19.15.5.9 COMPLIANCE:

A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:

(1) currently meets the financial assurance requirements of 19.15.8 NMAC;

(2) is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;

(3) does not have a penalty assessment that is unpaid more than 30 days after issuance of the order assessing the penalty; ~~and~~

(4) currently meets the requirements of 19.15.25.8 NMAC ~~has no more than the following number of wells out of compliance with 19.15.25.8 NMAC that are not~~ or is subject to an agreed compliance or final order setting a schedule for bringing the wells into compliance with 19.15.25.8 NMAC and imposing sanctions if the schedule is not met; and ~~:~~

~~**(a)** two wells or fifty percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;~~

~~**(b)** five wells if the operator operates between 101 and 500 wells;~~

~~**(c)** seven wells if the operator operates between 501 and 1000 wells; and~~

~~**(d)** 10 wells if the operator operates more than 1000 wells.~~

(5) currently meets the requirements of 19.15.27.8.A to -D NMAC.

B. Inactive wells.

(1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:

(a) shows no production or injection for past 14 ~~15~~ months or has had a final determination of no beneficial use under 19.15.25.9 NMAC;

(b) does not have its well bore plugged in accordance with 19.15.25.109 ~~9~~ NMAC through 19.15.25.1211 ~~11~~ NMAC;

(c) is not in approved temporary abandonment in accordance with 19.15.25.1312 ~~12~~ NMAC through 19.15.25.1514 ~~14~~ NMAC; and

(d) is not subject to an agreed compliance or final order setting a schedule for bringing the well into compliance with 19.15.25.8 NMAC.

(2) A well inactive for more than 14 ~~15~~ months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

C. Financial assurance. The division shall make available on its website and update weekly the status of operators' financial assurance that 19.15.8 NMAC requires, according to division records.

[19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/2008; A, 11/30/2016, A, 2/25/2020]

19.15.5.10 ENFORCEMENT:

A. General. Whenever the division determines that a person violated or is violating the Oil and Gas Act or a provision of any rule, order, permit or authorization issued pursuant to the Oil and Gas Act, the division may seek a sanction by:

(1) issuing a temporary cessation order if it determines that the alleged violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The temporary cessation order shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

(2) issuing a notice of violation; or

(3) commencing a civil action in district court.

B. Sanctions. The division may seek one or more of the following sanctions:

(1) a civil penalty;

(2) modification, suspension, cancellation or termination of a permit or authorization;

(3) plugging and abandonment of a well;

(4) remediation and restoration of a well location and associated facilities, including the removal of surface and subsurface equipment and other materials;

(5) remediation and restoration of a location affected by a spill or release;

(6) forfeiture of financial assurance;

(7) shutting in a well or wells; and

(8) any other remedy authorized by law.

C. Notice of violation.

(1) A notice of violation issued by the division shall state with reasonable specificity:

(a) the identity of the alleged violator;

(b) the nature and factual and legal basis of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;

(c) whether compliance is required immediately or within a specified time period;

(d) the sanction(s) available for the alleged violation, the sanction(s) proposed by the division, and a statement that the division will take into consideration the violators good faith efforts to comply with the applicable requirements;

(e) the availability of a process for informal review and resolution of the alleged violation, and the procedure to initiate the informal review process, including the contact information of the appropriate division employee;

(f) a statement that if the notice of violation is not informally resolved within 30 days of service, the division will hold a hearing, but that the hearing shall not prohibit the parties from negotiating and settling the notice of violation at any time; and

(g) the date of the hearing, which shall be no later than 90 days after the date of the notice of violation.

(2) The division shall serve the notice of violation on the alleged violator by certified mail, and may provide the notice of violation by electronic mail if possible.

(3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives the alleged violator's right of review by the commission.

(4) If the division and the alleged violator fail to enter a stipulated final order within 30 days

of service, the division shall hold a hearing at the division's principal office.

D. Civil penalties. A civil penalty assessed by the division shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of noncompliance under the Oil and Gas Act and other relevant factors. The civil penalty assessed by the division shall not exceed $2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed $10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed $200,000.

E. Adjudicatory procedures. These adjudicatory procedures shall apply to hearings on temporary cessation orders and notices of violation before the division, and the provisions of 19.15.4 NMAC shall not apply.

(1) General provisions.

(a) Designation of parties. The parties shall be the division and the person served with a notice of violation or order, referred to herein as "respondent".

(b) Representation. Respondent may appear and participate in a hearing either pro se or through counsel, provided that a collective entity, including a corporation, partnership, unincorporated association, political subdivision or governmental agency shall appear only through counsel or a duly authorized officer or member.

(c) Rule applicability. In the absence of a specific provision in this section, the hearing examiner may apply the New Mexico rules of civil procedure and evidence.

(d) Computation of time. In computing any period of time under 19.15.5.10 NMAC the day of the event from which the designated period begins to run shall not be included, and the last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which case the time is extended until the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service, and service is by first class mail only, three days is added to the prescribed period.

(e) Extensions of time. The hearing examiner may grant an extension of time to file a document or continue a hearing upon timely motion upon consent of the parties, or for good cause shown after consideration of prejudice to the other party and undue delay to the hearing.

(f) Filing of documents. A party shall file the original of each document and serve a copy on the other party, accompanied by a certificate of service identifying the method and address used to complete service.

(g) Service of documents. A party shall serve each document on the other party or its counsel, as applicable, by personal service or first class mail, or by electronic mail if the parties agree.

(h) Form of documents. Unless otherwise ordered, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, shall contain the caption of the notice of violation or temporary cessation order on the first page and shall be signed by the party or its counsel, as applicable.

(2) Pre-hearing procedures.

(a) Docketing. At the expiration of the 30 day period for informal resolution of a notice of violation, when a party appeals a final order under Subsection E of 19.15.5.10 NMAC, or when the division gives notice that it intends to extend a temporary cessation order, the division shall docket the notice of violation or order for hearing, identify the factual basis for the alleged violation and proposed sanction(s), and serve a notice of docketing on respondent.

(b) Answer. No later than 10 days after service of the notice of docketing, respondent shall file an answer stating its objection, if any, and the factual and legal basis for such objection, to each alleged violation and proposed sanction in the notice of violation or order.

(c) Hearing examiner. The hearing examiner shall have the authority to take all measures necessary to conduct a fair, impartial and efficient adjudication of issues, and to maintain order and avoid undue delay, including the authority to conduct pre-hearing conferences and hearings, rule on procedural and evidentiary motions, govern the examination of witnesses and the admission of evidence, issue orders and prepare a recommended decision. After the division issues the notice of violation, the hearing examiner shall not discuss ex parte the merits of the proceeding with the division or the respondent.

(d) Pre-hearing conference. The hearing examiner may hold a pre-hearing conference to narrow the issues, eliminate or resolve preliminary matters and encourage settlement, and may issue a pre-hearing order on procedural and evidentiary matters, including a schedule for the filing of motions and testimony, stipulations regarding alleged violations and requested relief, including proposed civil penalties or

elements thereof, and any other matter necessary for the efficient conduct of the hearing.

(e) Pre-hearing statements. No later than seven calendar days before the hearing, a party who intends to present evidence at the hearing shall file and serve a statement that contains the following information:

(i) the name, address, employment and qualifications, including education and work history, of each witness;

(ii) a statement identifying the opinions and factual assertions supporting each witness' testimony;

(iii) the exhibits and other evidence to be presented by each witness; and

(iv) procedural matters that are to be resolved prior to the hearing.

(f) Enforcement. The hearing examiner may enforce the requirements of 19.15.5.10 NMAC by any appropriate means, including the exclusion of testimony, exhibits and other evidence.

(g) Motions.

(i) General. All motions, except motions made orally during the hearing, shall be in writing, specify the grounds for the motion, state the relief sought, indicate whether the motion is opposed or unopposed and be served on the other party.

(ii) Unopposed motions. An unopposed motion shall state that concurrence of the other party was obtained and shall be accompanied by a proposed order approved by the parties.

(iii) Opposed motions. An opposed motion shall state either that concurrence was sought and not obtained, or the reason that concurrence was not sought.

(iv) Response. No later than 10 days after service of an opposed motion, the opposing party may file a response. Failure to file a response shall be deemed a waiver of any objection to the granting of the motion.

(v) Reply. No later than 10 days after service of a response to an opposed motion, the moving party may file a reply.

(vi) Decision. The hearing examiner shall decide all motions without a hearing, unless otherwise ordered by the hearing examiner sua sponte or upon written request of a party.

(h) Shortening Deadlines. On the written request of the alleged violator showing good cause, the hearing examiner may shorten the deadlines specified in Paragraph (2) of Subsection E of 19.15.10 NMAC to conduct the hearing on the division's application for a temporary cessation order as expeditiously as possible. If the division opposes the request to shorten deadlines, the procedures for opposed motions set forth in Subparagraph (g) of Paragraph (2) of Subsection G of 19.15.5.10 NMAC shall not apply and the hearing examiner shall decide the request, with or without hearing, as quickly as practicable.

(3) Hearing procedures.

(a) General. The hearing examiner shall admit all evidence, unless he or she determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded by the New Mexico rules of evidence is not admissible.

(b) Witness examination. Witnesses shall be examined orally and under oath or affirmation, provided that the parties may stipulate to the admission of the testimony of a witness, or part thereof. Parties shall have the right to cross-examine a witness, provided that the hearing examiner may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony.

(c) Exhibits. A party shall label each exhibit used during the hearing or offered into evidence with a designation identifying the party, the witness using or offering the exhibit and a serial number.

(d) Burden of persuasion. The division has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the alleged violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

(4) Post-hearing procedures.

(a) Transcript. The hearing shall be transcribed verbatim. Respondent may order a copy of the transcript from the reporter at its own expense.

(b) Recommended decision. The hearing examiner shall prepare a recommended decision for review by the director.

(c) Final order. The director shall file a final order addressing the material issues of fact and law and may assess a sanction for each alleged violation, which shall be served on the division and the respondent.

F. Commission review. No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. The commission shall conduct a de novo review, provided however, that the parties may stipulate to the issues to be heard and to the admission of all or part of the record before the division. The commission shall conduct the hearing in accordance with the adjudicatory procedures in Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2), Paragraph (3) and Subparagraph (a) of Paragraph (4) of Subsection E of 19.15.5.10 NMAC.

G. Rehearings. A party may file an application for rehearing with the commission pursuant to Section 70-2-25 NMSA 1978.

H. Payment of civil penalty. Respondent shall pay the full amount of the civil penalty assessed in the final order (i) no later than 30 days after the director serves the final order, or (ii) if respondent files a notice of appeal to the commission or the district court pursuant to Section 70-2-25 NMSA 1978, no later than 30 days after the commission or the district court files a final order or the appeal is withdrawn.

I. Resolution after commencement of hearing. If the parties agree to resolve a notice of violation at any time after the commencement of a hearing, they shall file a stipulated final order signed by both parties. The stipulated final order shall state that respondent admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives respondent's right of review by the commission or the court, as applicable.

J. Publication. On or about October 1 of each year, the division shall publish a list identifying the temporary cessation orders and notices of violation issued during the preceding year, along with the civil penalty paid, if any.

K. Reservation. Nothing in 19.15.5.10 NMAC precludes the division from bringing any other action and seeking any relief allowed by the Oil and Gas Act.

[19.15.5.10 NMAC – Rp, 19.15.5.10 NMAC, 2/25/2020]

19.15.5.11 **ENFORCEABILITY OF PERMITS AND ADMINISTRATIVE ORDERS:** A person who conducts an activity pursuant to a permit, administrative order or other written authorization or approval from the division shall comply with every term, condition and provision of the permit, administrative order, authorization or approval.

[19.15.5.11 NMAC - Rp, 19.15.1.41 NMAC, 12/1/2008]

HISTORY of 19.15.5 NMAC:

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

NMAC History:

Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 12, 40 & 41) (filed 04/27/2001) and 19.15.14 NMAC, Procedure (Section 1227) (filed 09/16/2005), were replaced by 19.15.5 NMAC, Enforcement and Compliance, effective 12/1/2008.

EXHIBIT 90-C

APPLICANTS' POST-HEARING PROPOSED AMENDMENTS TO 19.15.8 NMAC FINAL

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 operating authority under 19.15.9.9 NMAC, is drilling or proposes to drill or acquire operating authority under 19.15.9.9 NMAC 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 under 19.15.9.9 NMAC until the operator has furnished the required financial assurance. This Subsection A applies to Subsections B through H of this Section.

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:

(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. Low producing. 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 low producing well prior to transfer.

(2) Beginning May 1, 2029, an operator shall provide a one well plugging financial assurance for each low producing well. Each operator with a low producing well or wells shall annually review the number of low producing wells registered to the operator and shall update the one well plugging financial assurance by May 1 of each year.

(3) An operator of a low producing well may request a variance to the one well plugging financial assurance requirement of $150,000 upon a demonstration satisfactory to the division that there is a physical impediment limiting the well's midstream take away capacity. A demonstration shall include a certification from the operator detailing the nature of the physical impediment, explaining why the physical impediment is outside the control of the operator, detailing the alternatives that were or are being explored to address the lack of take away capacity, and an estimated date when the lack of take away capacity will be corrected. The demonstration shall also include the notification from the midstream operator required pursuant to 19.15.28.8.D NMAC.

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

E. Operators with 20 percent or more of wells in inactive, approved temporarily abandoned or expired temporarily abandoned status.

(1) Beginning May 1, 2029, an operator with 20 percent or more of their wells in inactive status, approved temporarily abandoned status or expired temporarily abandoned 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 wells in such statuses is decreased below 20 percent. Each operator with wells in this financial assurance category shall annually review the number of wells in inactive status, approved temporarily abandoned status and expired temporarily abandoned status registered to the operator and shall update the one well plugging financial assurance by May 1 of each year.

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

F.~~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 F~~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.~~

G.~~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.~~

H. Beginning January 1, 2032, 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, 2031 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 2030; 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 producer price index. By November 1, 2031 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. The division may adjust the applicable financial assurance amounts in accordance with this Section but may not do so more frequently than three years from the date of the last adjustment.
[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 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 19.15.9.9 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 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.

EXHIBIT 90-D

APPLICANTS' POST-HEARING AMENDMENTS TO 19.15.9 NMAC
FINAL

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 9 WELL OPERATOR PROVISIONS

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

19.15.9.2 SCOPE: 19.15.9 NMAC applies to persons or entities operating oil or gas wells within New Mexico.
[19.15.9.2 NMAC - N, 12/1/08]

19.15.9.3 STATUTORY AUTHORITY: 19.15.9 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.
[19.15.9.3 NMAC - N, 12/1/08]

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

19.15.9.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section. [19.15.9.5 NMAC - N, 12/1/08]

19.15.9.6 OBJECTIVE: To require an operator of a well or wells to register with the division prior to commencing operations and to require the reporting of a change of operator or a change of name to the division. [19.15.9.6 NMAC - N, 12/1/08]

19.15.9.7 DEFINITIONS:[RESERVED]
[See 19.15.2 NMAC for definitions.]
[19.15.9.7 NMAC - N, 12/1/08]

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 a representative designated by the operator that within the past ten years the new operator has not been subject to any final administrative forfeiture demand from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and has not been out of compliance with adjudicated order or settlement agreement with a state or federal agency for any state or federal violation related to oil and gas laws or regulations in any domestic jurisdiction 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 within the past ten years has had a final administrative forfeiture demand from any state or federal agency, has forfeited financial assurance to any state or federal agency, or has been out of compliance with an adjudicated order or settlement agreement with a state or federal agency for any state or federal violation related to oil and gas laws or regulations in any domestic jurisdiction in which the applicant does business;

(~~2~~3) an officer, director, partner in the applicant or person with an interest in the applicant exceeding 25 percent, 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;

(~~3~~4) the applicant 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; or

(4~~5~~) the applicant is a corporation, ~~or~~ limited liability company, limited liability limited partnership, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state ~~public regulation commission~~ to do business in New Mexico.~~; or~~

~~**(5)** the applicant is a limited partnership and is not registered with the New Mexico secretary of state to do business in New Mexico.~~

~~C.~~D. An operator shall inform the division of its current address of record and emergency contact names and telephone numbers by submitting changes in writing to the division's financial assurance administrator in the division's Santa Fe office within 30 days of the change.

~~D.~~E. ~~The division may require an~~ A representative designated by the operator shall ~~or applicant to~~ certify compliance annually of ~~identify~~ its current and past officers, directors and partners and its current and past ownership interest in other operators consistent with 19.15.9.8.C(2) and (3) NMAC.

[19.15.9.8 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.9 CHANGE OF OPERATOR:

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 a representative designated by the operator of the new operator that within the past ten years the new operator has not been subject to any final administrative forfeiture demand from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and has not been out of compliance with an adjudicated order or settlement agreement with a state or federal agency for any state or federal violation related to oil and gas laws or regulations in any domestic jurisdiction 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 a representative designated by 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) within the past ten years the new operator has had a final administrative forfeiture demand from any state or federal agency, has forfeited financial assurance to any state or federal agency, or has been out of compliance with an adjudicated order or settlement agreement with a state or federal agency for any state or

federal violation related to oil and gas laws or regulations in any domestic jurisdiction in which the new operator does business;

(3) 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;

(4) 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;

(5) the applicant is a corporation, limited liability company, limited liability limited partnership, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state to do business in New Mexico; or

(6) the certification or disclosure requirements set forth in Subsection B of this Section disclose a substantial risk that the new operator would be unable to satisfy the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells the new operator intends to take over.

D. In determining whether to grant or deny a change of operator when the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC, the director or the director's designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having ~~more than the allowed number of~~ wells out of compliance with 19.15.25.8 NMAC. If the non-compliance is caused by the operator having ~~more than the allowed number of~~ wells not in compliance with 19.15.25.8 NMAC, the director or director's designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

E. No well, facility or site that is out of compliance with Subsection A of 19.15.5.9 NMAC, 19.15.29 NMAC, or 19.15.30 NMAC shall be transferred unless, prior to transfer, the current operator brings the associated well, facility or site into compliance or the new operator submits a schedule of compliance approved by the division.

[19.15.9.9 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.10 CHANGE OF NAME:

A. A change of operator name occurs when the name of the entity responsible for a well or wells changes but the entity does not change. For a change of name, the OGRID number remains the same, but division records are changed to reflect the new operator name.

B. An operator shall apply for a change of name by filing a form C-146 using the division's web-based online application and supplying documentary proof that the change is a name change and not a change of operator. If the operator is a corporation, limited liability company or limited partnership, the name must be registered with the public regulation commission or the New Mexico secretary of state, as applicable. The division shall not approve a change of name until the state land office and the taxation and revenue department have cleared the change of name on the OGRID.

[19.15.9.10 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.11 EXAMPLES OF CHANGE OF OPERATOR AND CHANGE OF NAME:

A. Mr. Smith, a sole proprietor, operates five wells under the name "Smith oil company". Mr. Smith changes the name of his company to "Smith production company". The name of the entity operating the wells has changed, but the entity has not changed. Mr. Smith should apply for a change of name.

B. Mr. Smith incorporates his business, changing from the sole proprietorship, "Smith production company", to a corporation: "Smith production company, inc.". The entity responsible for the wells has changed, and Mr. Smith and "Smith production company, inc." should apply for a change of operator.

C. Smith production company, inc., a New Mexico operator, merges with XYZ, inc., which does not operate in New Mexico. At the surviving entity's election, this transaction may be treated as a change of name from Smith production company, to XYZ, inc., maintaining the existing OGRID, or as a change of operator, with a new OGRID.

D. Two New Mexico operators, Smith production company, inc. and Jones production company, inc., merge. The surviving corporation is Jones production company, inc. A different entity now operates the

wells Smith production company, formerly operated, and the wells must be placed under that entity's OGRID. Jones production company, inc. and Smith production company, inc. should apply for a change of operator as to the wells Smith production company, inc. operated.
[19.15.9.11 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

HISTORY of 19.15.9 NMAC:

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

NMAC History:
That applicable portion of 19.15.3 NMAC, Drilling (Section 100) (filed 11/30/2005) was replaced by 19.15.9 NMAC, Well Operator Provisions, effective 12/1/08.

EXHIBIT 90-E

APPLICANTS' POST-HEARING PROPOSED AMENDMENTS TO 19.15.25 NMAC FINAL

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 25 PLUGGING AND ABANDONMENT OF WELLS

19.15.25.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.25.1 NMAC - Rp, 19.15.4.1 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.2 SCOPE: 19.15.25 NMAC applies to persons that operate oil or gas wells within New Mexico.
[19.15.25.2 NMAC - Rp, 19.15.4.2 NMAC, 12/1/2008]

19.15.25.3 STATUTORY AUTHORITY: 19.15.25 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-12 NMSA 1978, which authorizes the division to require dry or abandoned wells to be plugged so as to confine oil, gas or water in the strata in which they are found and to prevent them from escaping into other strata.
[19.15.25.3 NMAC - Rp, 19.15.4.3 NMAC, 12/1/2008]

19.15.25.4 DURATION: Permanent.
[19.15.25.4 NMAC - Rp, 19.15.4.4 NMAC, 12/1/2008]

19.15.25.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of asection.
[19.15.25.5 NMAC - Rp, 19.15.4.5 NMAC, 12/1/2008]

19.15.25.6 OBJECTIVE: To establish requirements for properly abandoning and plugging wells drilled for oil or gas or service wells including seismic, core, exploration or injection wells or placing the wells in temporary abandonment in order to protect public health, fresh water and the environment.
[19.15.25.6 NMAC - Rp, 19.15.4.6 NMAC, 12/1/2008]

19.15.25.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.25.8 WELLS TO BE PROPERLY ABANDONED:

A. The operator of wells drilled for oil or gas or services wells including seismic, core, exploration or injection wells, whether cased or uncased, shall plug the wells as Subsection B of 19.15.25.8 NMAC requires.

B. The operator shall either properly plug and abandon a well or apply to the division to place the well in approved temporary abandonment in accordance with 19.15.25 NMAC within ~~90~~ 60 days after:

(1) a 60 day period following suspension of drilling operations, except a well that has been drilled and properly cased but not completed for less than 18 months and a well that has been completed but has not produced for less than 18 months, unless the well is a dry hole;

(2) a determination that a well is no longer usable for beneficial purposes; or

(3) a period of one year in which a well has been continuously inactive.

[19.15.25.8 NMAC - Rp, 19.15.4.201 NMAC, 12/1/2008]

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 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 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 from the division that a well or wells are presumed to not being used for beneficial purposes, a well operator may submit an application for administrative review the division. The division shall issue a final determination based on the application, information available in division records, and any information requested by the division. An operator may file an application for hearing within 30 days of the division's final determination pursuant to 19.15.4 NMAC. Applications shall demonstrate beneficial use of a well or wells and the operator shall provide any information requested by the division. Such documentation may include:

(1) A demonstration that the well is reasonably projected to produce in an economically beneficial manner;

(2) A demonstration that the well has effectively produced or injected at least 90 days within the consecutive 12 month period and there is no downhole mechanical integrity problem;

(3) A demonstration 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;

(4) A plugging and abandonment plan as described in 19.15.9.9.B NMAC; and

(5) Other relevant information requested by the division or provided by the operator or a regulatory agency.

E. This Subsection shall become effective 12 months after [the effective date of this rule], except that as to operators that the division determines are substantially out of compliance with 19.15.7.24 NMAC, 19.15.8.9 NMAC, or 19.15.25.8 NMAC, this Subsection shall become effective on [the effective date of this rule].

19.15.25.~~9~~10 NOTICE OF PLUGGING:

A. The operator shall file notice of intention to plug with the division on form C-103 prior to commencing plugging operations. The notice shall provide all the information 19.15.7.14 NMAC requires including operator and well identification and proposed procedures for plugging the well.

B. In addition, the operator shall provide a well bore diagram showing the proposed plugging procedure.

C. The operator shall notify the division 24 hours prior to commencing plugging operations. In the case of a newly drilled dry hole, the operator may obtain verbal approval from the appropriate district supervisor or the district supervisor's representative of the plugging method and time operations are to begin. The operator shall file written notice in accordance with 19.15.25.~~11~~12 NMAC with the division within 10 days after the district supervisor has given verbal approval.

[19.15.25.9 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.~~10~~11PLUGGING:

A. Before an operator abandons a well, the operator shall plug the well in a manner that permanently confines all oil, gas and water in the separate strata in which they are originally found. The operator may accomplish this by using mud-laden fluid, cement and plugs singly or in combination as approved by the division on the notice of intention to plug.

B. The operator shall mark the exact location of plugged and abandoned wells with a steel marker not less than four inches in diameter set in cement and extending at least four feet above mean ground level. The operator name, lease name and well number and location, including unit letter, section, township and range, shall be welded, stamped or otherwise permanently engraved into the marker's metal. A person shall not build permanent structures preventing access to the wellhead over a plugged and abandoned well without the division's written approval. A person shall not remove a plugged and abandonment marker without the division's written approval.

C. The operator may use below-ground plugged and abandonment markers only with the division's written approval when an above-ground marker would interfere with agricultural endeavors. The below-ground marker shall have a steel plate welded onto the abandoned well's surface or conductor pipe and shall be at least three feet below the ground surface and of sufficient size so that all the information 19.15.16.8 NMAC requires can be stenciled into the steel or welded onto the steel plate's surface. The division may require a re-survey of the well location.

D. As soon as practical, but no later than one year after the completion of plugging operations, the operator shall:

(1) level the location;

(2) remove deadmen and other junk; and

(3) take other measures necessary or required by the division to restore the location to a safe and clean condition.

E. The operator shall close all pits and below-grade tanks pursuant to 19.15.17 NMAC.

F. Upon completion of plugging and clean up restoration operations as required, the operator shall contact the appropriate division district office to arrange for an inspection of the well and location.

[19.15.25.10 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.~~11~~12 REPORTS FOR PLUGGING AND ABANDOMENT:

A. The operator shall file form C-105 as provided in 19.15.7.16 NMAC.

B. Within 30 days after completing required restoration work, the operator shall file with the division

a record of the work done on form C-103 as provided in 19.15.7.14 NMAC.

C. The division shall not approve the record of plugging or release a bond until the operator has filed necessary reports and the division has inspected and approved the location.

[19.15.25.11 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.~~12~~13 APPROVED TEMPORARY ABANDONMENT:

A. The division may place a well in approved temporary abandonment for a period of up to five years upon a demonstration from the operator that the well will be used for beneficial use within the approved period of temporary abandonment.

(1) The operator's demonstration shall include an explanation why the well should be placed in temporary abandonment, how the well will be put to beneficial use in the future including supporting technical data, a plan that describes the ultimate disposition of the well, and the time frame for that disposition.

(2) The operator shall provide any other information the division determines appropriate, including a current and complete well bore diagram; geological evidence; geophysical data; well casing information; waste removal and disposition; production engineering; geophysical logs, e.g., cement bond logs, caliper logs, and casing inspection logs; economic data; and health, safety, and environmental information.

(3) If the division denies a request, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

B. Prior to the expiration of an approved temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location, or apply for a new approval to temporarily abandon the well for a period of up to two years in accordance with 19.15.25.13.A NMAC and demonstrate the well's mechanical integrity in accordance with Sections 19.15.25.14 and -15 NMAC. A second term shall not exceed two additional years, upon which time the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

C. Extension.

(1) Prior to the expiration of a renewal of an approved temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location, or apply for an extension to continue to place the well in temporary abandonment for a period of up to five years.

(2) To obtain an extension, the operator shall apply to the division to extend temporary abandonment status. The division shall provide at least 30 days' notice of the application for extension on its website and to the division mailing list, and the operator shall provide at least 30 days' notice of the application for extension in a newspaper of general circulation. The operator, division, or any interested person may request a hearing on the application for extension before the division. Any such hearing shall be conducted pursuant to the procedures for adjudicatory proceedings in 19.15.4 NMAC, except that in any such adjudicatory proceeding any interested person may intervene under 19.15.4.11.A NMAC. If a hearing is not requested, the division shall proceed with processing the application for extension.

(a) To obtain an extension, the operator shall demonstrate to the division that the well has future beneficial use.

(b) The application for extension shall include:

(i) a plan of development for the well that includes documentation that the plan is technically feasible and financially viable;

(ii) a description of any work completed and in progress under ~~on~~ the plan of development;~~,~~

(iii) documentation demonstrating why the well was not brought back to beneficial use as had been proposed or plugged and abandoned during the prior period of temporary abandonment;

(iv) a plan that describes the ultimate disposition of the well including ~~;~~ the time frame for that disposition; and

(v) documentation demonstrating the well's casing and cementing meet the requirements Sections 19.15.25.14 and -15 NMAC and that monitoring procedures are in place to ensure such requirements will be met and maintained during the period of temporary abandonment.

(c) The operator shall provide any other relevant information requested by the division including engineering information, geological information, financial information, and applicable contracts that support the future beneficial use.

(4) An operator may reapply for an extension for periods of up to five years under the same terms and conditions as provided for in this Subsection. If the division denies a request for extension, the

operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

D. An operator is limited to placing the following numbers of wells in approved temporary abandonment:

~~**A.**~~**(1)** one well, if the operator operates between one and five wells; or

~~**B.**~~**(2)** one-third of all wells (rounded to the nearest whole number), if the operator operates more than five wells.

E. Implementation schedule for existing wells.

(1) Inactive wells (that are not in approved or expired temporary abandonment). Wells that have been inactive as of [effective date of amendments] for less than three years are eligible for temporary abandonment status in accordance with Subsection A of this Section. Wells that have been inactive for three or more years shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section.

(2) Wells in approved temporary abandoned status. Any operator of a well in temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section prior to the date temporary abandonment status terminates. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

(3) Wells in expired temporary abandoned status. Any operator of a well in expired temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this Section. Unless an operator of a well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

F. The timeframes Subsections A, B and C in this Section shall be implemented consistent with any applicable federal requirements.

[19.15.25.12 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.~~13~~14 REQUEST FOR APPROVAL AND PERMIT FOR APPROVED TEMPORARY ABANDONMENT:

A. An operator seeking approval for approved temporary abandonment shall submit the request on form C-103 ~~a notice of intent~~ to seek approved temporary abandonment for the well setting forth the demonstration required in 19.15.25.13 NMAC and describing the proposed temporary abandonment procedure the operator will use. The operator shall not commence work until the division has approved the request. The operator shall give 24 hours' notice to the appropriate division district office before beginning work.

B. The division shall not approve a permit for approved temporary abandonment until the operator furnishes evidence demonstrating that the well's casing and cementing are mechanically and physically sound and in such condition as to prevent:

(1) damage to the producing zone;

(2) noncontainment of well bore fluids to the atmosphere or migration of hydrocarbons or water;

(3) the contamination of fresh water or other natural resources; and

(4) the leakage of a substance at the surface.

C. The operator shall demonstrate both internal and external mechanical integrity pursuant to Subsection A of 19.15.25.15 NMAC.

D. Upon successful completion of the work on the temporarily abandoned well, the operator shall submit a request for approved temporary abandonment to the appropriate division district office on form C-103 together with other information Subsection E of 19.15.7.15 NMAC requires.

E. The division shall not approve a permit for approved temporary abandonment until the operator provides financial assurance for the well that complies with Subsection D of 19.15.8.9 NMAC.

F. The division shall specify the permit's expiration date., ~~which shall be not more than five years from the date of approval.~~

[19.15.25.13 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.~~14~~15 DEMONSTRATING MECHANICAL INTEGRITY:

A. An operator may use the following methods of demonstrating internal casing integrity for wells to be placed in approved temporary abandonment, for wells for which approved temporary abandonment is to be renewed, and for wells for which an extension is to be granted:

(1) the operator may set a cast iron bridge plug within 100 feet of uppermost perforations or production casing shoe, load the casing with inert fluid and pressure test to 500 psi surface pressure with a pressure drop of not more than 10 percent over a 30 minute period;

(2) the operator may run a retrievable bridge plug or packer to within 100 feet of uppermost perforations or production casing shoe, and test the well to 500 psi surface pressure for 30 minutes with a pressure drop of not greater than 10 percent over a 30 minute period; or

(3) the operator may demonstrate that the well has been completed for less than five years ~~and has not been connected to a pipeline~~.

B. During the testing described in Paragraphs (1) and (2) of Subsection A of 19.15.25.15 NMAC the operator shall:

(1) open all casing valves during the internal pressure tests and report a flow or pressure ~~change~~ occurring immediately before, during or immediately after the 30 minute pressure test;

(2) top off the casing with inert fluid prior to leaving the location; and

(3) report flow during the test in Paragraph (2) of Subsection A of 19.15.25.15 NMAC to the appropriate division district office prior to completion of the temporary abandonment operations; the division may require remediation of the flow prior to approving the well's temporary abandonment.

(4) Any isolation device used to test mechanical integrity pursuant to Subsection A of this Section shall remain in place for the duration of the temporary abandonment.

(5) The operator shall perform a caliper log and casing integrity log. Taking into account the purpose and duration of the temporary abandonment, the division may waive this requirement upon a demonstration by the operator of the current and anticipated internal casing integrity of the well and that such integrity shall be maintained throughout the period of temporary abandonment.

C. An operator may use any method approved by the EPA in 40 C.F.R. section 146.8(c) to demonstrate external casing and cement integrity for wells to be placed in approved temporary abandonment.

D. The division shall not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal.

E. The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 1000 pound spring, which has been calibrated within the six months prior to conducting the test. Witnesses to the test shall sign the chart. The operator shall submit the chart, caliper log, and casing integrity log with form C-103 requesting approved temporary abandonment.

F. The division may approve other testing methods the operator proposes if the operator demonstrates that the test satisfies the requirements of Subsection B of 19.15.25.14 NMAC.

[19.15.25.14 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008]

19.15.25.~~15~~16 WELLS TO BE USED FOR FRESH WATER:

A. When a well to be plugged may safely be used as a fresh water well and the landowner agrees to take over the well for that purpose, the operator does not need to plug the well above the sealing plug set below the fresh water formation.

B. The operator shall comply with other requirements contained in 19.15.25.10 NMAC through 19.15.25.12 NMAC regarding plugging, including surface restoration and reporting requirements.

C. Upon completion of plugging operations, the operator shall file with the division a written agreement signed by the landowner whereby the landowner agrees to assume responsibility for the well. Upon the filing of this agreement and division approval of well abandonment operations, the operator is no longer responsible for the well, and the division may release bonds on the well.

[19.15.25.15 NMAC - Rp, 19.15.4.204 NMAC, 12/1/2008]

HISTORY of 19.15.25 NMAC:
History of Repealed Material: 19.15.4 NMAC, Plugging and Abandonment of Wells (filed 11/29/2001) repealed 12/1/2008.

NMAC History:
19.15.4 NMAC, Plugging and Abandonment of Wells (filed 11/29/2001) was replaced by 19.15.25 NMAC, Plugging and Abandonment of Wells, effective 12/1/2008.