

**STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF PROPOSED  
AMENDMENTS TO THE COMMISSION'S  
RULES ON FINANCIAL ASSURANCE  
AND PLUGGING AND ABANDONMENT  
OF WELLS, 19.15.2, 19.15.8, AND 19.15.25 NMAC**

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**CASE NO. 16078**

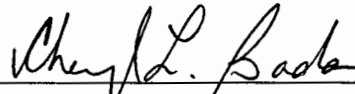
**APPLICATION FOR RULEMAKING**

The New Mexico Oil Conservation Division ("OCD") hereby applies to the Oil Conservation Commission ("Commission") to amend, after notice and public hearing, the Commission's rules on financial assurance and plugging and abandonment of wells and related matters. The proposed rule changes are intended to implement the requirements of the Oil and Gas Act concerning financial assurance, including amendments from the 2018 Legislative Session, and to further improve the permitting of approved temporary abandonment and coordinate the permitting with financial assurance requirements.

The proposed rule changes address Commission Rules 19.15.2, 19.15.8, and 19.15.25 NMAC. A draft of the proposed rule changes is attached as Exhibit 1. A proposed form of legal notice is attached as Exhibit 2.

OCD requests that the Commission determine to proceed with the rulemaking and, if possible, schedule a public hearing for the date of the next Commission meeting on May 24, 2018.

Respectfully submitted,



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Attorney for Oil Conservation Division

## *Exhibit 2*

### **Notice of Public Meeting and Public Hearing**

The State of New Mexico through its Oil Conservation Commission (Commission) hereby gives notice of the following special meeting and public hearing to be held commencing at 9:00 a.m. on \_\_\_\_\_, 2018, in Porter Hall, 1<sup>st</sup> floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, before the Oil Conservation Commission. A preliminary agenda for the meeting will be available to the public no later than two weeks prior to the meeting. A final agenda will be available no later than 72 hours preceding the meeting. At the meeting, a public hearing will be held on the following case.

***Case No. 16078: IN THE MATTER OF PROPOSED AMENDMENTS TO THE COMMISSION'S RULES ON FINANCIAL ASSURANCE AND PLUGGING AND ABANDONMENT OF WELLS, 19.15.2, 19.15.8, AND 19.15.25 NMAC***

The New Mexico Oil Conservation Division (OCD) proposes to amend 19.15.2, 19.15.8, and 19.15.25 NMAC to make changes concerning financial assurance and plugging and abandonment of wells and related matters. The proposed rule changes include:

19.15.2.7 NMAC. OCD proposes to amend 19.15.2.7 NMAC to add definitions of terms used in financial assurance provisions.

19.15.8 NMAC. OCD proposes to amend 19.15.8.9 NMAC to provide for the increase in blanket bond amounts authorized by the Legislature and to change the amount of single well bonds to conform to statutory requirements.

19.15.25 NMAC. OCD proposes to amend 19.15.25 NMAC to coordinate approved temporary abandonment with financial assurance requirements and to limit the use of approved temporary abandonment.

**Purpose of Proposed Rule.** The proposed changes will further the goals of the Oil and Gas Act to require proper plugging inactive wells and to protect natural resources by providing for financial assurance that more accurately reflects the actual cost of well plugging, by implementing the changes promulgated by the 2018 Legislature, and by limiting the overuse of approved temporary abandonment.

**Legal Authority.** These amendments are authorized by the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, and specifically Section 70-2-11 (which authorizes the adoption of rules to carry out the purposes of the Act and to prevent waste), Section 70-2-12(B)(1) (which authorizes the adoption of rules on plugging and financial assurance), and Section 70-2-14 (which requires the agency to establish categories of financial assurance). The rulemaking proceeding will be governed by the Commission's rule on rulemaking, 19.15.3 NMAC.

**The full text of the proposed rule amendments is available** from Commission Clerk, Florene Davidson at (505) 476-3458 or can be viewed on the Rules page at the Oil Conservation Division's website at <http://www.emnrd.state.nm.us/oed>, or at Oil Conservation Division offices in Santa Fe, Hobbs, Artesia, or Aztec.

**Public Hearing and Comment.** The Commission will hold a **public hearing** on the proposed rules at the Commission meeting which will commence at 9:00 A.M. on \_\_\_\_\_, 2018, in Porter Hall, 1st Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico. The hearing may be continued to following days if not completed.

**Written or electronic comments** on the proposed rule may be hand delivered or mailed to the Commission Clerk, Florene Davidson, 3d floor, 1220 South St. Francis Drive, Santa Fe, NM 87505, or e-mailed to [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us). All written or electronic comments must be received by the Commission Clerk no later than 9:00 A.M. on \_\_\_\_\_, 2018, unless the Commission or the Commission Chair extends this deadline.

**Persons intending to submit proposed modifications to the proposed rule amendments, to present technical testimony at the hearing, or to cross-examine witnesses** must file six copies of a Pre-hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 P.M. on \_\_\_\_\_, 2018. Pre-hearing Statements must be hand-delivered, mailed, or e-mailed to the Commission Clerk at the above address.

Any person who has not submitted a pre-hearing statement may present non-technical testimony or make an unsworn statement at the hearing. A person may also offer exhibits with the testimony so long as the exhibits are relevant to the proposed rule changes and do not unduly repeat the testimony. Any person who wishes to present non-technical testimony should indicate his or her intent on a sign-in sheet at the hearing. A person who testifies at the hearing is subject to cross-examination by the commissioners, commission counsel, or a party on the subject matter of the person's direct testimony.

**If you are an individual with a disability** who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505) 476-3458 or through the New Mexico Relay Network at 1-800-659-1779 by \_\_\_\_\_, 2018. Public documents can be provided in various accessible forms. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A party who plans to use projection equipment at a hearing must contact Ms. Davidson seven business days prior to the hearing requesting the use of the projection equipment. Wireless internet is available; however, the person requesting to use the wireless connection must provide a laptop computer.

**Technical Information** that served as a basis for the proposed rule includes:  
OCD Well Plugging Costs FY2014-FY2018 (spreadsheet)

These materials can be viewed on the Rules page at the Oil Conservation Division's website at <http://www.emnrd.state.nm.us/oed>.

Exhibit 1

**PROPOSED AMENDMENTS TO RULES 19.15.2, 19.15.8, AND 19.15.25 NMAC**

**A. Proposed amendments to 19.15.2.7 NMAC (subsections M and T only)**

**19.15.2.7 DEFINITIONS:**

**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 100 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 a thousand cubic feet.
- (4) “MCFD” means a thousand cubic feet per day.
- (5) “MCFGPD” means a thousand 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)~~ (7) “Mg/kg” means milligrams per kilogram.
- ~~(9)~~ (8) “Mineral estate” is the most complete ownership of oil and gas recognized in law and includes the mineral interests and the royalty interests.
- ~~(10)~~ (9) “Mineral interest owners” means owners of an interest in the executive rights, which are the rights to explore and develop, including oil and gas lessees (*i.e.*, “working interest owners”) and mineral interest owners who have not signed an oil and gas lease.
- ~~(11)~~ (10) “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)~~ (11) “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.

**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 in excess of 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) “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) “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) “TPH” means total petroleum hydrocarbons.

(7) "Treating plant" means a plant constructed for the purpose of 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) "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) "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) "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) "True vertical depth" means the distance from the surface to a point in the well bore which is the deepest subsurface depth drilled. True vertical depth is measured by using a straight line perpendicular to the surface.

~~(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 wellbore, 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.

## B. Proposed amendments to 19.15.8.9 and .14 NMAC

### 19.15.8.9 CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:

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

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

C. ~~[The division accepts three forms of financial assurance: a one well financial assurance that covers a single well, a blanket financial assurance that covers multiple wells, and a blanket plugging financial assurance for wells in temporarily abandoned status. The operator shall cover a well that has been in temporary abandonment for more than two years by either a one well financial assurance or a blanket plugging financial assurance for wells in temporarily abandoned status, except that the division may waive the requirement of a one well financial assurance for a well that is shut in because of the lack of a pipeline connection. The division may release the one well financial assurance upon the operator's or surety's written request after the well is returned to production if a blanket financial assurance covers the well. The division may release a blanket plugging financial assurance for wells in temporarily abandoned status upon the operator's or surety's written request after the wells are plugged and abandoned in accordance with 19.15.25 NMAC or are returned to production if a blanket financial assurance covers the wells or if the operator files a one well financial assurance for each well of the operator's wells in temporarily abandoned status; upon the operator's or surety's written request, the amount of the operator's blanket financial assurance for wells held in temporarily abandoned status may be reduced in accordance with the number of wells the operator elects to cover by said financial assurance.]~~ The division accepts the following categories of financial assurance for wells that are not required to provide financial assurance under Subsection D of 19.15.8.9 NMAC:

(1) a one well financial assurance in the amount of \$25,000 plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well; or

(2) a blanket plugging financial assurance in the following amounts covering all oil, gas or service wells drilled, acquired or operated in this state by the principal on the bond:

(a) \$50,000 for one to 10 wells;

(b) \$75,000 for 11 to 50 wells;

(c) \$125,000 for 51 to 100 wells;

(d) \$250,000 for more than 100 wells.

#### D. [Amounts:

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

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

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

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

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

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

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

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

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

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

~~\_\_\_\_\_ (d) A blanket financial assurance for more than 25 wells shall be in the amount of \$1,000,000.]~~ An operator shall provide financial assurance with one of the following categories for a well that has been in temporarily abandoned status for more than two years or for a well that the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC:

(1) a one well financial assurance in the amount of \$25,000 plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well; or

(2) a blanket plugging financial assurance for temporarily abandoned status wells in the following amounts covering all oil, gas or service wells drilled, acquired or operated in this state by the principal on the bond:

(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.

E. For the purposes of calculating the one well financial assurance, the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells.

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

#### **19.15.8.14 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 permit to drill, deepen or plug back and applications for approved temporary abandonment filed on or after July 24, 2018, and for all other wells, on October 31, 2018.

### **C. Proposed amendments to 19.15.25.12 and .13 NMAC**

**19.15.25.12 APPROVED TEMPORARY ABANDONMENT:** The division may place a well in approved temporary abandonment for a period of up to five years. 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 an operator who seeks approval to place more than one well in approved temporary abandonment, the operator is limited to placing no more than thirty-three and a third percent of the wells the operator operates in approved temporary abandonment.

### **19.15.25.13 REQUEST FOR APPROVAL AND PERMIT FOR APPROVED TEMPORARY ABANDONMENT:**

**A.** An operator seeking approval for approved temporary abandonment shall submit on form C-103 a notice of intent to seek approved temporary abandonment for the well 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) 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 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 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.