

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

CASE NO. 16078

IN THE MATTER OF THE:

**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**

**OIL CONSERVATION DIVISION'S
AMENDED APPLICATION**

1. The Oil Conservation Division of the New Mexico Energy Minerals and Natural Resources Department ("the Division) hereby amends its Application in this case to comply with the Oil Conservation Commission's directive in Order No. R-14834-A that "OCD shall provide proposed amendments of 19.15.8.9 to address the concerns raised by the Commission.
2. Attached hereto as Exhibit A is a proposed rule which would amend the rule approved by the Commission in Order No. R-14834, but not yet filed. The newly proposed amendments will require financial assurance for all wells in the state, regardless of mineral estate ownership, except those wells covered by a federally required financial assurance. The amounts of financial assurance are not changed from those the Commission approved in Order R 14834. However, the number of wells attributed to an operator that will be considered in determining the amount of financial assurance required will not include wells covered by a federally required financial assurance.

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3. Attached hereto as Exhibit B is the notice of the rehearing for publication.

Respectfully submitted,



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Certificate of Service

I hereby certify that the Oil Conservation Division's Amended Application was served by electronic mail to the following on 10-5, 2018.

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This is an amendment to 19.15.8 NMAC, amending Sections 1, 3, 9 and 14 effective //2018.

19.15.8.1 ISSUING AGENCY: ~~[Energy, Minerals and Natural Resources Department, Oil Conservation Division]~~ Oil Conservation Commission.

[19.15.8.1 NMAC - N, 12/1/2008; A, //2018]

19.15.8.3 STATUTORY AUTHORITY: 19.15.8 NMAC is adopted pursuant to the Oil and Gas Act, [NMSA-1978,] 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, //2018]

19.15.8.9 [FINANCIAL ASSURANCE FOR WELL PLUGGING] CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. **Applicability.** ~~[A person]~~ An operator 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 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 ~~[division]~~ commission rules, unless the well is covered by federally required financial assurance.

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

~~[C. 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.~~

~~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~~

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~~\$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.]~~

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 Subsection D of 19.15.8.9 NMAC in one of the following categories:

(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; 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 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. Inactive wells. An operator shall provide financial assurance for wells that are 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 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; 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 covering all wells of the operator subject to Subsection 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.

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

[19.15.8.9 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015; A, / /2018]

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 (effective date of rule), and for all other wells on (three months after the effective date of rule).

[19.15.8.14 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, / /2018]

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NOTICE OF LIMITED REHEARING IN RULEMAKING

The State of New Mexico through its Oil Conservation Commission (Commission) hereby gives notice of the limited rehearing to be held in the following rulemaking:

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

Rehearing. The Commission will commence the public rehearing on the portion of the proposed rule amendments covering financial assurance in 19.15.8 NMAC, and, in particular, the applicability of 19.15.8 NMAC to wells that are covered by federally required financial assurance, at the Commission meeting at 9:00 A.M. on November 15, 2018, in Porter Hall, 1st Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Proposed Rule Amendments. The 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: (a) amending 19.15.2.7 NMAC to add definitions of terms used in financial assurance provisions; (b) amending 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; and (c) amending 19.15.25 NMAC to coordinate approved temporary abandonment with financial assurance requirements and to limit the use of approved temporary abandonment.

On July 19 and 20, 2018, the Commission held a hearing on the OCD's application to amend 19.15.2.7, 19.15.8, and 19.15.25 NMAC and on August 20, 2018 issued Order R-14834 to adopt certain changes to those rules. On September 13, 2018, the Commission, granted a limited rehearing to review the scope of the financial assurance requirements of 19.15.8 NMAC, and, in particular, the applicability of 19.15.8 NMAC to wells which are covered by federal financial assurance.

Purpose of Proposed Rule Amendments. The proposed changes will further the goals of the Oil and Gas Act by providing financial assurance that more accurately reflects the actual cost of well plugging, by implementing changes promulgated by the 2018 Legislature, and by limiting the overuse of approved temporary abandonment.

Legal Authority. The proposed rule amendments and rehearing 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, including the rehearing, is governed by the Commission's rule on rulemaking, 19.15.3 NMAC.

Written or electronic comments on the portions of the proposed rule amendments for which the Commission granted the rehearing may be hand delivered or mailed to the Commission Clerk, Florene Davidson, 3rd floor, 1220 South St. Francis Drive, Santa Fe, NM 87505, or e-mailed to florence.davidson@state.nm.us. Written or electronic comments shall be limited to the scope of the rehearing. All written or electronic comment must be received by the Commission Clerk no later than 9:00 A.M. on November 15, 2018, unless the Commission or the Commission Chair extends this deadline.

Persons intending to submit proposed modifications to the proposed rule amendments to 19.15.8 NMAC that are the subject of the rehearing, present technical testimony at the rehearing, or 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 November 1, 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 rehearing. Non-technical testimony or unsworn statements shall be limited to the scope of the rehearing. A person may also offer exhibits with the testimony so long as the exhibits are relevant to the scope

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of the rehearing 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 rehearing is subject to cross-examination by the commissioners, commission counsel, or a party on the subject matter of the person's direct testimony.

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. Information on the summary and purpose of the proposed rule, the legal authority for the proposed rule, and the order granting the rehearing is also available at the Rules page.

Technical Information that served as a basis for the proposed rule amendments includes:
OCD Well Plugging Costs FY2014-FY2018 (spreadsheet)
These materials can be viewed on the Rules page.

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 November 1, 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.

19.15.3.12 RULEMAKING HEARINGS:

A. Conduct of hearings.

(2) (g) at the close of the hearing, the commission shall determine whether to keep the record open for written submittals including arguments and proposed statements of reasons supporting the proposed commission decision; in considering whether the record will remain open, the commission shall consider the reasons why the material was not presented during the hearing, the significance of material to be submitted and the necessity for a prompt decision; if the commission keeps the record open, the commission chairman shall announce at the hearing's conclusion the subjects on which the commission will allow submittals and the deadline for filing the submittals; and

(h) if the hearing is not completed on the day that it commences, the commission may, by announcement, continue the hearing as necessary without further notice.

19.15.3.13 COMMISSION DELIBERATION AND ACTION:

A. **Deliberation.** If a quorum of the commission attended the hearing, and if the hearing agenda indicates that a decision might be made at the hearing's conclusion, the commission may immediately deliberate and decide in open session on the proposed rule change. The commission may otherwise deliberate and act in open session at any commission meeting where such deliberation and possible action is listed on the meeting agenda.

B. If, during deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may reopen the hearing for additional evidence after notice pursuant to 19.15.3.9 NMAC.

