

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

Case No. 16078

**PRE-HEARING STATEMENT OF THE INDEPENDENT
PETROLEUM ASSOCIATION OF NEW MEXICO**

The Independent Petroleum Association of New Mexico ("IPANM") submits this Pre-Hearing Statement as required by the rules of the Oil Conservation Commission ("the Commission").

APPEARANCES

PARTIES

Applicant Oil Conservation Division

Independent Petroleum Association
Of New Mexico

ATTORNEYS

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STATEMENT OF THE CASE

The Oil Conservation Division's ("Division's") application proposes amendments to the Commission's rules on financial assurance, the plugging and abandonment of wells, and related matters. The application states that the Division's proposed rule changes are intended to implement changes to the Oil and Gas Act's financial assurance requirements, including amendments passed during the 2018 legislative session, and impose new requirements for the Division-approved temporary abandonment of wells and financial assurance for temporarily abandoned wells. The Division's proposed rule changes address 19.15.2, 19.15.8, and 19.15.25 NMAC.

IPANM, acting on behalf of its members, is an interested party. With the exception of the blanket financial assurance requirements set out in the new 19.15.8.9(C) (2) proposed by the Division, IPANM does not oppose the Division's application. IPANM proposes different blanket financial assurance requirements, which are attached hereto.

IPANM proposes modifications to the blanket financial assurance requirements because the bonding levels proposed by the Division place a disproportionate and unreasonable financial burden on the many small, independent oil and gas operators who are members of IPANM and operate marginal wells. The bonding levels would put these operators in the position of committing funds to financial assurance that they would otherwise utilize for operating costs. The Division's proposed bonding levels could potentially cause certain of these operators to exit the oil and gas business, resulting in lost jobs and lost revenue to the State of New Mexico. Moreover, the levels of financial assurance proposed by the Division may be a deterrent to, or barrier of entry for, independent operators in other states who would otherwise consider conducting oil and gas operations in New Mexico.

IPANM intends to cross-examine witnesses and provide a statement regarding its perspective on the Division's proposed amendments and the parties' evidentiary presentations.

PROPOSED EVIDENCE

IPANM will not call any witnesses or introduce any documentary evidence. IPANM reserves the right to call a rebuttal witness and introduce rebuttal exhibits as appropriate.

PROCEDURAL MATTERS

IPANM is not aware of any procedural matters to be resolved prior to the hearing.

Respectfully submitted,

HINKLE SHANOR LLP

A handwritten signature in blue ink, appearing to read "Gary W. Larson", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July, 2018 I served a true and correct copy of the foregoing *Pre-Hearing Statement of the Independent Petroleum Association of New Mexico* via email to:

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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; \$25,000 for one to 10 wells;
 - (b) \$75,000 for 11 to 50 wells; \$50,000 for 11 to 99 wells;
 - (c) \$125,000 for 51 to 100 wells; \$100,000 for 100 to 149 wells;
 - (d) \$250,000 for more than 100 wells; \$200,000 for 149 to 199 wells;
 - (e) \$250,000 for 200 or more 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.