

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

**APPLICATION OF THE NEW MEXICO
OIL CONSERVATION DIVISION FOR
AMENDMENT OF RULE 19.15.8 NMAC**

**CASE NO. 15314
ORDER NO. R-13996**

ORDER OF THE COMMISSION

This matter came before the Oil Conservation Commission ("Commission") on an application submitted by the Oil Conservation Division ("Division") to amend Rule 19.15.8 NMAC. The Commission, having conducted a public hearing on June 4, 2015, and having considered the testimony and record in this case, enters this Order.

FINDINGS AND CONCLUSIONS:

1. Under the Oil and Gas Act ("Act"), NMSA Sections 70-2-6, 70-2-11 and 70-2-12, the Commission and the Division are granted the authority to adopt rules to carry out the purposes of the Act. Specifically, the Act grants the authority to require financial assurance and requires the agency to "establish categories of financial assurance". NMSA 1978, Section 70-2-14 (2015).

2. In 2006, the Legislature amended Section 70-2-14 to allow for the use of a well specific plugging insurance policy and provided criteria for an acceptable well specific plugging insurance policy. Laws 2006, Chapter 59.

3. In 2015, the Legislature again amended Section 70-2-14 to allow for blanket plugging financial assurance for wells held in temporarily abandoned status. The Legislature also provided that a rule shall establish the amounts for a blanket plugging financial assurance for temporarily abandoned status wells, which amounts must be greater than \$50,000. Laws 2015, Chapters 79 (HB 383) and 99 (SB 442).

4. The Division submitted an application, on May 1, 2015, to the Commission to amend Rule 19.15.8 NMAC. The proposed rule amendments proposed to codify the changes made by the Legislature in 2006 and 2015 and to make other changes to the financial assurance rule. (Exhibit 6)

5. The Commission scheduled a hearing for June 4, 2015 and notice for the hearing was published in a newspaper of general circulation in the state, was published in the New Mexico Register, was posted on the Division's website and was placed on the Commission's docket which was then sent to persons who have requested such notice.

All notices were conducted within the deadlines under the rules. 19.15.3.9 NMAC. (Exhibit 1)

6. At the hearing, Cheryl Bada and Esther Varela-Lopez testified on behalf of the Division. Daniel Sanchez and Denise Gallegos were available for questions.

a. Ms. Bada testified that the rule change was necessary to implement the Legislative changes from 2006 and 2015. She testified that the amounts proposed in 19.15.8.9 were originally offered in the legislation proposed in 2015 and were later amended out of the legislation. The amounts have been reviewed by the Division and by stakeholders and there is consensus on the amounts. The Division believes the coverages are reasonable for the implementation of the blanket financial assurance.

b. Ms. Varela-Lopez testified to the review of Division financial assurance documents that she conducted and some issues that she identified with the ongoing documentation of financial assurance compliance. She found that changes to documents over time could create difficulties in the implementation of the program. Changes to 19.15.8.8, 19.15.8.9.E, and 19.15.8.16 allow for improved implementation and documentation of compliance with the financial assurance requirements.

7. The only testimony or comment on the proposed rule change was made by the Division. The Commission voted to close the record and began deliberations immediately after the close of the record. The Commission reviewed the proposal and made minor changes to the proposal to clarify the rule and to correct errors.

8. The changes to 19.15.8.8 NMAC are necessary to maintain adequate documentation of financial assurance coverage for an operator and allow the Division to document that sufficient coverage is provided.

9. The changes to 19.15.8.9 NMAC implement the changes to the Oil and Gas Act enacted by the Legislature in 2006 and 2015. The changes recognize the use of plugging insurance policies and blanket plugging financial assurance for wells in temporarily abandoned status. The amounts provided for blanket plugging financial assurance for temporarily abandoned wells meets the requirements of the Legislature and is necessary and reasonable to provide adequate financial assurance. The change to 19.15.8.9.A provides consistency with the definitions in 19.15.2.

10. The changes to 19.15.8.10 NMAC clarify the rule by providing the name of the agency that can authorize a surety to do business in New Mexico.

11. The changes to 19.15.8.11 NMAC codifies existing practice and provides the same procedure for letters of credit as for surety bonds in 19.15.8.10 NMAC.

12. The new section, 19.15.8.15 NMAC, codifies the changes to the Act by the 2006 Legislature which provided for plugging insurance policies as an alternative form of financial assurance. The new section incorporates the criteria established by the Legislature.

13. The new section, 19.15.8.16 NMAC, is necessary for proper implementation of financial assurance by the Division. The Division may be a creditor in any bankruptcy proceeding, particularly if the Division is required to use the Reclamation Fund to plug wells.

14. The Commission concludes that it has the authority to enact the proposed rule change, that proper notice and procedures were followed in this rulemaking and that the amendments to 19.15.8, as provided in Attachment 1, are supported by substantial evidence in the record and are necessary to implement the changes to the Oil and Gas Act and to provide for the proper implementation of the financial assurance requirements of the Oil and Gas Act.

IT IS THEREFORE ORDERED THAT:

Rule 19.15.8 NMAC be amended as provided in Attachment 1 and that all actions necessary to make the rule change effective be taken, including filing with the State Records and Archives Center and publication in the New Mexico Register.

Done in Santa Fe, New Mexico, this 4th day of June, 2015.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



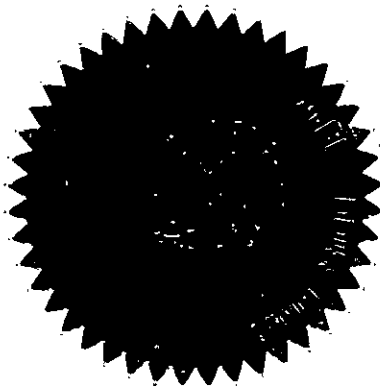
DAVID CATANACH, CHAIR



ROBERT BALCH, Member



PATRICK PADILLA, Member



S E A L

ATTACHMENT 1

This is an amendment to 19.15.8 NMAC, amending Sections 8 - 11 and adding Sections 15 and 16, effective 06/30/2015.

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, 12/1/08; A, 6/30/15]

19.15.8.9 FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. A person~~[, firm, corporation or association]~~ 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 ~~[two]~~ three forms of financial assurance: a one-well financial assurance that covers a single well, ~~[and]~~ 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 \$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.

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, 12/1/08; A, 6/30/15]

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.

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, 12/1/08; A, 6/30/15]

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, 12/1/08; A, 6/30/15]

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.

(3) 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, 6/30/15]

19.15.8.16 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, 6/30/15]