| PROPOSED RULE  | Current Rule   |  |
|--|--|--|
| <u>36.11(E)</u>  | 36.11(E)   |  |
| <b>E.</b> Forms of financial assurance. The division may             | E. Forms of financial assurance. The division may  |  |
| accept the following forms of financial assurance.                   | accept the following forms of financial assurance.   |  |
| (1) Surety bonds. A surety bond                                      | (1) Surety bonds. A surety bond  |  |
| shall be executed <u>and notarized</u> by the applicant and by       | shall be executed by the applicant and by a corporate  |  |
| a corporate surety licensed by the superintendent of                 | surety licensed to do business in the state, and shall be  |  |
| insurance to do business in the state [, and shall-be-non-           | non-cancelable.  |  |
| cancelable]. All surety bonds shall be non-cancelable                | (2) Letters of credit. A letter of   |  |
| and payable to the energy, minerals and natural                      | credit shall be issued by a bank organized or authorized   |  |
| resources department, oil conservation division within               | to do commercial banking business in the United States,  |  |
| 45 days after demand is made by the division. All                    | shall be irrevocable for a term of not less than five years  |  |
| surety bonds shall be governed by the laws of the state              | and shall provide for automatic renewal for successive,  |  |
| of New Mexico.   | like terms upon expiration, unless the issuer has notified   |  |
| (2) Letters of credit. A letter of                                   | the division in writing of non-renewal at least 90 days  |  |
| credit shall be issued by a [bank organized or                       | before its expiration date. The letter of credit shall be  |  |
| authorized to do commercial-banking business in the                  | payable to the state of New Mexico in part or in full  |  |
| United States] national or state-chartered banking                   | upon receipt from the director or the director's   |  |
| association, shall be irrevocable for a term of not less             | authorized representative of demand for payment  |  |
| than five years and shall provide for automatic renewal              | accompanied by a notice of forfeiture.   |  |
| for successive, like terms upon expiration, unless the               | (3) Cash accounts. An applicant may  |  |
| issuer has notified the division in writing of non-                  | provide financial assurance in the form of a federally   |  |
| enewal at least $[90]$ <u>120</u> days before its expiration         | insured or equivalently protected cash account or  |  |
| ate. [The letter of credit-shall be payable to the state             | accounts in a financial institution, provided that the   |  |
| of New-Mexico in part or in full upon receipt from the               | operator and the financial institution shall execute as to   |  |
| director or the director's authorized representative of              | each such account a collateral assignment of the account   |  |
| demand for payment accompanied by a notice of                        | to the division, which shall provide that only the   |  |
| forfeiture.] All letters of credit shall be governed by the          | division may authorize withdrawals from the account.   |  |
| laws of the state of New Mexico. If a letter of credit is            | In the event of forfeiture pursuant to Subsection C of   |  |
| not replaced by an approved financial assurance within               | 19.15.36.18 NMAC, the division may, at any time and from time to time, direct normant of all or part of the    |  |
| <u>30 days of notice of non-renewal provided to the</u>              | from time to time, direct payment of all or part of the balance of such account (excluding interest accrued on |  |
| division, the division may demand and collect a letter<br>of credit. | the account) to itself or its designee for the surface   |  |
| (3) Cash accounts. An [applicant]                                    | waste management facility's closure.   |  |
| operator may provide financial assurance in the form of              | waste management faemty 5 closure.   |  |
| a federally insured or equivalently protected cash                   |  |  |
| account or accounts in a financial institution, provided             |  |  |
| that the operator and the financial institution shall                | ,  |  |
| execute as to each such account a collateral assignment              |  |  |
| of the account to the division, which shall provide that             |  |  |
|  |  |  |

EXHIBIT

only the division may authorize withdrawals from the

[Subsection C of 19.15.36.18] 19.15.36 NMAC, the division may, at any time and from time to time, direct payment of all or part of the balance of such account excluding interest accrued on the account) to itself or

account.

In the event of forfeiture pursuant to

| ts designee for the surface waste management facility's |  |
|---|--|
| osure and post closure. Any assignment of cash          |  |
| ollateral shall be governed by the laws of the state of |  |
| lew Mexico and shall be on division-prescribed forms.   |  |

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