

## **APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.8 NMAC**

### **TITLE 19       NATURAL RESOURCES AND WILDLIFE CHAPTER 15 OIL AND GAS PART 8       FINANCIAL ASSURANCE**

**19.15.8.1       ISSUING AGENCY:** Oil Conservation Commission.  
[19.15.8.1 NMAC - N, 12/1/2008; A, 1/15/2019]

**19.15.8.2       SCOPE:** 19.15.8 NMAC applies to persons engaged in oil and gas development and production within New Mexico.  
[19.15.8.2 NMAC - N, 12/1/2008]

**19.15.8.3       STATUTORY AUTHORITY:** 19.15.8 NMAC is adopted pursuant to the Oil and Gas Act, 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, 1/15/2019]

**19.15.8.4       DURATION:** Permanent.  
[19.15.8.4 NMAC - N, 12/1/2008]

**19.15.8.5       EFFECTIVE DATE:** December 1, 2008, unless a later date is cited at the end of a section.  
[19.15.8.5 NMAC - N, 12/1/2008]

**19.15.8.6       OBJECTIVE:** To establish financial assurance requirements for persons, firms, corporations or associations who have drilled or acquired, are drilling or propose to drill or acquire an oil, gas or injection or other service well to furnish financial assurance acceptable to the division.  
[19.15.8.6 NMAC - N, 12/1/2008]

**19.15.8.7       DEFINITIONS:** [RESERVED]  
[See 19.15.2.7 NMAC for definitions.]

**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, 12/1/2008; A, 6/30/2015]

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

- A.       Applicability.** An operator who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well 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 commission rules, unless the well is covered by federally required financial assurance. The division shall not approve, and the operator shall not proceed with any proposed drilling or acquisition until the operator has furnished the 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.       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 Subsections D and E of 19.15.8.9 NMAC in one of the following categories:

## APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.8 NMAC

(1) a one well plugging financial assurance in the amount of \$150,000 per well; ~~\$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 amount of \$250,000 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. Marginal wells and inactive wells.** Notwithstanding the provisions in Subsection C(2) in this Section:

(1) As of the [effective date of amendments] a transferee operator shall provide a one well plugging financial assurance of \$150,000 for each marginal well prior to transfer.

(2) Beginning January 1, 2028, an operator shall provide a one well plugging financial assurance for each marginal well.

(3) An operator with 15 percent or more of their wells in marginal or inactive well status, or a combination thereof, shall provide a one well plugging financial assurance in the amount of \$150,000 for each well registered to the operator until the percentage of the operator's marginal and inactive wells is decreased below 15 percent.

(4) An operator may furnish all necessary one well plugging financial assurance in the form of a single instrument.

**E.D. Inactive wells and wells in approved and expired temporarily abandoned status.** An operator shall provide financial assurance for wells that are inactive and wells in approved and expired temporarily abandoned status, ~~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 plugging financial assurance in the amount of \$150,000 per well; ~~\$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 equal to an average of \$150,000 per well covering all wells of the operator subject to Subsection ~~E~~ D of 19.15.8.9 NMAC.:

(e) — \$150,000 for one to five wells;

(f) — \$300,000 for six to 10 wells;

(g) — \$500,000 for 11 to 25 wells; and

(h) — \$1,000,000 for more than 25 wells.

**F.D.** Operators who have on file with the division a blanket plugging financial assurance that does not cover additional wells shall file additional one single well plugging bond financial assurance for any wells not covered by the existing blanket plugging financial assurance bond in an amount as determined by Section 19.15.8.9 NMAC, subject to any limitations in Section 70-2-14 NMSA 1978, ~~or, in the alternative, may file a replacement blanket bond.~~

**G.** On January 1, 2028 and on January 1 of each successive year, the division may adjust the financial assurance amounts provided by Subsections C(1), D, E and F of this Section by multiplying the financial assurance as of January 1, 2027 by a fraction, the numerator of which is the consumer price index ending in September of the previous year and the denominator of which is the consumer price index ending September 2026; provided that any financial assurance shall not be adjusted below the minimum amounts required in Subsections C(1), D, E and F of this Section as a result of a decrease in the consumer price index. By November 1, 2027 and by November 1 of each successive year, the division shall post on its website the financial assurance requirements in Subsection A through E of this Section for the next year. As used in this subsection, "consumer price index" means the consumer price index, not seasonally adjusted, for all urban consumers, United States city average for all items, or its successor index, as published by the United States department of labor for a 12 month period ending September 30.

[19.15.8.9 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015; A, 1/15/2019]

### 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. The surety shall be listed on U.S. department of the treasury circular 570.

**B.** The operator shall deposit cash representing the full amount of the bond in an account in a

## **APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.8 NMAC**

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, 12/1/2008; A, 6/30/2015]

### **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, 12/1/2008; A, 6/30/2015]

### **19.15.8.12 RELEASE OF FINANCIAL ASSURANCE:**

**A.** The division shall release a financial assurance document upon the operator's or surety's written request if all wells drilled or acquired under that financial assurance have been plugged and abandoned and the location restored and remediated and released pursuant to 19.15.25.9 NMAC through 19.15.25.11 NMAC, or have been covered by another financial assurance the division has approved.

**B.** Transfer of a property or a change of operator does not of itself release a financial assurance. The division shall not approve a request for change of operator for a well until the new operator has the required financial assurance in place and is otherwise in compliance with the requirements of 19.15.5.9 NMAC and 19.15.9.9 NMAC.

[19.15.8.12 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008]

### **19.15.8.13 FORFEITURE OF FINANCIAL ASSURANCE:**

**A.** Upon the operator's failure to properly plug and abandon and restore and remediate the location of a well or wells a financial assurance covers, the division shall give notice to the operator and surety, if applicable, and hold a hearing as to whether the well or wells should be plugged and abandoned and the location restored and remediated in accordance with a division-approved plugging program. If it is determined at the hearing that the operator has failed to plug and abandon the well and restore and remediate the location as provided for in the financial assurance or division rules, the director shall issue an order directing the well to be plugged or abandoned and the location restored and remediated in a time certain. Such an order may also direct the forfeiture of the financial assurance upon the failure or refusal of the operator, surety or other responsible party to properly plug and abandon the well and restore and remediate the location.

**B.** If the financial assurance's proceeds exceed the costs the division incurred plugging and abandoning the well and restoring and remediating the location the financial assurance covers, the division shall return the excess to the surety or the operator, as appropriate.

**C.** If the financial assurance's proceeds are not sufficient to cover all the costs the division incurred in plugging and abandoning the well and restoring and remediating the location, the division may seek indemnification from the operator as provided in Subsection E of Section 70-2-14 NMSA 1978.

**D.** The division shall deposit forfeitures and funds collected pursuant to a judgment in a suit for indemnification in the oil and gas reclamation fund.

[19.15.9.13 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008]

### **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 January 15, 2019, and for all other 19.15.8 NMAC

## **APPLICANTS' PROPOSED REVISED AMENDMENTS TO 19.15.8 NMAC**

wells on April 15, 2019.

[19.15.8.14 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 1/15/2019]

### **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.

**19.15.8.16** 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, 6/30/2015]

**19.15.8.17 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, 6/30/2015]

### **HISTORY of 19.15.8 NMAC:**

**History of Repealed Material:** 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/2008.

### **NMAC History:**

That applicable portion of 19.15.3 NMAC, Drilling (Section 101) (filed 10/29/2001) was replaced by 19.15.8 NMAC, Financial Assurance, effective 12/1/2008.