STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER OF PROPOSED AMENDMENTS TO 19.15.2, 19.15.5, 19.15.8, 19.15.9, AND 19.15.25 NMAC

WESTERN ENVIRONMENTAL LAW CENTER, et al.
PETITONERS. **CASE NO. 24683**

PROPOSED FINAL RULE AMENDMENTS

Attached are the final rule amendments which the Oil Conservation Commission proposes to adopt, as set forth in the Rule Making Order and Reasons for the Action Taken. The final rules will be adopted and submitted to the State Records Center administrator pursuant to 19.15.3.15.A.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Sheila Apodaca

Sheila Apodaca, Commission Clerk
New Mexico Oil Conservation Commission

This is a short-form amendment to 19.15.2.7 NMAC, Subsections A, B, E, I, L and T, effective TBD.

Short form amendment explanatory statement. Subsections C, D, F-H, J-K, M-S, and U- through W were not shown as no changes were made to those subsections.

19.15.2.7 DEFINITIONS: These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.

A. Definitions beginning with the letter "A".

(1) "Abate" means to investigate, contain, remove or mitigate water pollution.

(2) "Abatement" means the investigation, containment, removal or other mitigation of water pollution.

(3) "Abatement plan" means a description of operational, monitoring, contingency and closure requirements and conditions for water pollution's prevention, investigation and abatement.

(4) "Act" or "Oil and Gas Act" means Chapter 70, Article 2 NMSA 1978, as it may be modified or amended.

(5) "Adjoining spacing units" mean those existing or prospective spacing units in the same pool that are touching at a point or line on the subject spacing unit.

(6) "Adjusted allowable" means the allowable production a well or proration unit receives after all adjustments are made.

(7) "AFE" means authorization for expenditure.

(8) "Affected persons" means the following persons owning interests in a spacing unit or other identified tract:

(a) the operator, as shown in division records, of a well on the tract, or, if the tract is included in a division-approved or federal unit, the designated unit operator;

(b) in the absence of an operator, or with respect to an application wherein the operator of the spacing unit or identified tract is the applicant, each working interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant files the application;

(c) as to any tract or interest therein that is not subject to an existing oil and gas lease, each mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application; and

(d) if the United States or state of New Mexico owns the mineral estate in the spacing unit or identified tract or any part thereof, the BLM or state land office, as applicable; or

(e) if the mineral estate in the spacing unit or identified tract or any part thereof is tribal land, the BLM, the United States department of the interior, bureau of Indian affairs, and the relevant tribe.

(9) "Allocated pool" means a pool in which the total oil or gas production is restricted and is allocated to various wells in the pool in accordance with proration schedules.

(10) "Allowable production" means that number of barrels of oil or cubic feet of gas the division authorizes to be produced from an allocated pool.

(11) "APD" means application for permit to drill.

(12) "API" means the American petroleum institute.

(13) "Approved temporary abandonment," <u>**"temporary abandonment," or "temporarily abandoned status"**</u> means the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC and complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

(14) "Aquifer" means a geological formation, group of formations or a part of a formation that can yield a significant amount of water to a well or spring.

(15) "ASTM" means ASTM International - an international standards developing organization that develops and publishes voluntary technical standards for a wide range of materials, products, systems and services.

B. Definitions beginning with the letter "B".

(1) "Back allowable" means the authorization for production of an underproduction resulting from pipeline proration.

(2) "Background" means, for purposes of ground water abatement plans only, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person's facility. This definition does not prevent the director from requiring abatement of commingled plumes of pollution, does not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons and does not preclude the director from exercising enforcement authority under any applicable statute, rule or common law.

(3) **"Barrel"** means 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.

(4) **"Barrel of oil"** means 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.

(5) **"Barrel of oil equivalent"** is determined by converting the volume of gas the well produced to barrels of oil by using a ratio of 6,000 cubic feet to one barrel of oil.

[~~(5)~~] **(6)** **"Below-grade tank"** means a vessel, excluding sumps and pressurized pipeline drip traps, where a portion of the tank's sidewalls is below the surrounding ground surface's elevation. Below-grade tank does not include an above ground storage tank that is located above or at the surrounding ground surface's elevation and is surrounded by berms.

(7) **"Beneficial purposes"** or **"beneficial use"** means an oil or gas well that is being used in a productive or beneficial manner including production, injection or monitoring.

[~~(6)~~] **(8)** **"Berm"** means an embankment or ridge constructed to prevent the movement of liquids, sludge, solids or other materials.

[~~(7)~~] **(9)** **"Biopile",** also known as biocell, bioheap, biomound or compost pile, means a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through biodegradation. This technology involves heaping contaminated soils into piles or "cells" and stimulating aerobic microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.

[~~(8)~~]**(10)** **"BLM"** means the United States department of the interior, bureau of land management.

[~~(9)~~]**(11)** **"Bottom hole pressure"** means the gauge pressure in psi under conditions existing at or near the producing horizon.

[~~(10)~~]**(12)** **"Bradenhead gas well"** means a well producing gas through wellhead connections from a gas reservoir that has been successfully cased off from an underlying oil or gas reservoir.

[~~(11)~~]**(13)** **"BS&W"** means basic sediments and water.

[~~(12)~~]**(14)** **"BTEX"** means benzene, toluene, ethylbenzene and xylene.

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E. **Definitions beginning with the letter "E"**.

(1) **"EC"** means electrical conductivity.

(2) **"Enhanced oil recovery project"** means the use or the expanded use of a process for the displacement of oil from an oil well or division-designated pool other than a primary recovery process, including but not limited to the use of a pressure maintenance process; a water flooding process; an immiscible, miscible, chemical, thermal or biological process; or any other related process.

(3) **"EOR project"** means an enhanced oil recovery project.

(4) **"EPA"** means the United States environmental protection agency.

(5) **"Exempted aquifer"** means an aquifer that does not currently serve as a source of drinking water, and that cannot now and will not in the foreseeable future serve as a source of drinking water because:

(a) it is hydrocarbon producing;

(b) it is situated at a depth or location that makes the recovery of water for drinking water purposes economically or technologically impractical; or

(c) it is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption.

(6) **"Exempt waste"** means oil field waste exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(7) **"Existing spacing unit"** means a spacing unit containing a producing well.

(8) **"Expired temporary abandonment"** or **"expired temporary abandonment status"** means the status of a well that is inactive and has been approved for temporary abandoned status in accordance with 19.15.25.13 NMAC, but that no longer complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

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I. **Definitions beginning with the letter "I"**.

(1) **"Illegal gas"** means gas produced from a gas well exceeding the division-determined allowable.

(2) **"Illegal oil"** means oil produced exceeding the allowable the division fixes.

(3) **"Illegal product"** means a product of illegal gas or illegal oil.

(4) **"Inactive well"** means a well that has had no production or injection for 12 consecutive months or is not being used for beneficial purposes [~~such as~~] including production, injection or monitoring and that is not being drilled, completed, repaired or worked over.

(5) **"Injection well"** means a well used for the injection of air, gas, water or other fluids into an underground stratum.

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L. **Definitions beginning with the letter "L"**.

(1) **"Limiting gas-oil ratio"** means the gas-oil ratio the division assigns to a particular oil pool to limit the volumes of casinghead gas that may be produced from the various oil producing units within that particular pool.

(2) **"Liner"** means a continuous, low-permeability layer constructed of natural or human-made materials that restricts the migration of liquid oil field wastes, gases or leachate.

(3) **"LLDPE"** means linear low-density polyethylene.

(4) **"Load oil"** means oil or liquid hydrocarbon that has been used in remedial operation in an oil or gas well.

(5) **"Log"** means a systematic detailed and correct record of formations encountered in drilling a well.

(6) **"Low producing well"** means an oil or gas well that produced less than 180 days and less than 1,000 barrels of oil equivalent within a consecutive 12 month period.

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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 more than 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)**~~] **(3)** **"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)**~~] **(4)** **"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)**~~] **(5)** **"TPH"** means total petroleum hydrocarbons.

[~~**(7)**~~] **(6)** **"Treating plant"** means a plant constructed for 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)**~~] **(7)** **"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)**~~] **(8)** **"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)**~~] **(9)** **"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)**~~] **(10)** **"True vertical depth"** means the difference in elevation between the ground level at the surface location of the well and the deepest point in the well bore.

[~~**(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 well bore, 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.

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[19.15.2.7 NMAC - Rp, 19.15.1.7 NMAC, 12/1/2008; A, 3/31/2015; A, 6/30/2016; A, 6/26/2018; A, 1/15/2019; A, 10/13/2020; A, 8/23/2022; A, 7/29/2025; A, TBD]

This is an amendment to 19.15.5 NMAC, Section 9, effective TBD.

19.15.5.9 COMPLIANCE:

A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:

(1) currently meets the financial assurance requirements of 19.15.8 NMAC;

(2) is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;

(3) does not have a penalty assessment that is unpaid more than 30 days after issuance of the order assessing the penalty; [~~and~~]

(4) [~~has no more than the following number of wells out of compliance with 19.15.25.8 NMAC that are not~~] currently meets the requirements of 19.15.25.8 NMAC or is subject to an agreed compliance or final order setting a schedule for bringing the wells into compliance with 19.15.25.8 NMAC and imposing sanctions if the schedule is not met; and

~~[**(a)** two wells or fifty percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;~~]

~~**(b)** five wells if the operator operates between 101 and 500 wells;~~

~~**(c)** seven wells if the operator operates between 501 and 1000 wells; and~~

~~**(d)** 10 wells if the operator operates more than 1000 wells.~~]

(5) currently meets the requirements of Subsections A to D of 19.15.27.8 NMAC.

B. **Inactive wells.**

(1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:

(a) shows no production or injection for past [~~15~~] 14 months or has had a final determination of no beneficial use under 19.15.25.9 NMAC;

(b) does not have its well bore plugged in accordance with [~~19.15.25.9~~] 19.15.25.10 NMAC through [~~19.15.25.11~~] 19.15.25.12 NMAC;

(c) is not in approved temporary abandonment in accordance with [~~19.15.25.12~~] 19.15.25.13 NMAC through [~~19.15.25.14~~] 19.15.25.15 NMAC; and

(d) is not subject to an agreed compliance or final order setting a schedule for bringing the well into compliance with 19.15.25.8 NMAC.

(2) A well inactive for more than [~~15~~] 14 months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

C. **Financial assurance.** The division shall make available on its website and update weekly the status of operators' financial assurance that 19.15.8 NMAC requires, according to division records.

[19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/2008; A, 11/30/2016, A, 2/25/2020; A, TBD]

This is an amendment to 19.15.8 NMAC, Section 9, 10 and 12 effective TBD.

19.15.8.9 CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. Applicability. An operator who has drilled or acquired operating authority under 19.15.9.9 NMAC, is drilling or proposes to drill or acquire operating authority under 19.15.9.9 NMAC of 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 of operating authority under 19.15.9.9 NMAC until the operator has furnished the required financial assurance. This Subsection A applies to Subsections B through H of this section.

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, E and F of 19.15.8.9 NMAC [~~in~~] via one of the following categories:

(1) a one well plugging 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;~~] $150,000 per well; or

(2) a blanket plugging financial assurance in the [~~following amounts~~] amount of $250,000 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. Low producing wells. Notwithstanding the provisions in Paragraph (2) of Subsection C in this Section;

(1) As of [effective date of amendments] a transferee operator shall provide a one well plugging financial assurance of $150,000 for each low producing well prior to transfer, unless the well being transferred is already covered by a one well financial assurance under Paragraph (2) of Subsection D, E or F of 19.15.8.9 NMAC.

(2) Beginning May 1, 2029, an operator shall provide a one well plugging financial assurance for each low producing well that is not covered by a one well financial assurance under Subsection E or F of 19.15.8.9 NMAC. Each operator with one or more low producing well or wells shall annually review the number of low producing wells registered to the operator and shall update the one well plugging financial assurance by May 1 of each year.

(3) An operator of a low producing well may request a variance to the one well plugging financial assurance requirement of $150,000 upon a demonstration satisfactory to the division that there is a physical impediment limiting the well's midstream takeaway capacity or interference from nearby operations, stimulation or drilling impacting safe or prudent pressure practices. The demonstration shall include a certification from the operator detailing the nature of the constraint, explaining why the constraint is outside the control of the operator, detailing the alternatives that were or are being explored to address the constraint, and an estimated date when the constraint will be corrected. The demonstration shall also include the notification from the midstream operator required pursuant to Subsection D of 19.15.28.8 NMAC.

(4) Upon receipt of an operator's written variance request, the division shall have 60 days to accept or deny the operator's variance. The division's failure to act on the variance request within such period shall be deemed a denial. If the division denies the operator's variance, the operator shall have 30 days in which to file a request for hearing with the division pursuant to 19.15.4 NMAC.

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

E. Operators with twenty percent or more of wells in inactive, approved temporarily abandoned or expired temporarily abandoned status.

(1) Beginning May 1, 2029, an operator with twenty percent or more of their wells in inactive status, approved temporarily abandoned status or expired temporarily abandoned status, or a combination thereof, shall provide a one well plugging financial assurance in the amount of $150,000 for each well that is registered to the operator but not covered by a one well financial assurance under Subsection D or F of 19.15.8.9 NMAC, until the percentage of the operator's wells in such statuses is decreased below twenty percent. Each operator with wells in this financial assurance category shall annually review the number of wells in inactive status, approved temporarily abandoned status and expired temporarily abandoned status registered to the operator and shall update the one well plugging financial assurance by May 1 of each year.

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

[~~D~~] F. [~~**Inactive wells**~~] **Wells that are in approved temporarily abandoned status for more than two years, inactive wells, and wells that are in expired temporarily abandoned status.** [~~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~~] An operator shall provide financial assurance for wells that are in approved temporarily abandoned status for more than two years, in inactive status, or in expired temporarily abandoned status 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 [~~$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~~] $150,000 per well; or

(2) a blanket plugging financial assurance equal to an average of $150,00 per well covering all wells of the operator subject to [~~Subsection D~~] Subsection F of 19.15.8.9 NMAC.

[~~E.~~] G. Operators who have on file with the division a blanket plugging financial assurance that does not cover additional wells shall file additional [~~single~~] one well [~~bond~~] plugging financial assurance for any wells not covered by the existing blanket [~~bond~~] plugging financial assurance in an amount as determined by 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~~] financial assurance in the form of a single instrument.

H. Beginning January 1, 2032, the division may adjust the financial assurance amounts provided by Paragraph (1) of Subsection C, D, E and F of this section by multiplying the financial assurance as of January 1, 2031 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 2030; provided that any financial assurance shall not be adjusted below the minimum amounts required in Paragraph (1) of Subsection C, D, E and F of this section as a result of a decrease in the consumer producer price index. By November 1, 2031, and by November 1 of each successive year, the division shall post on its website the financial assurance requirements in Subsections 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. The division may adjust the applicable financial assurance amounts in accordance with this section but may not do so more frequently than three years from the date of the last adjustment.

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

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 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; A, TBD]

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 19.15.9.9 NMAC.

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

This is an amendment to 19.15.9 NMAC, Sections 8 and 9, effective TBD.

19.15.9.8 OPERATOR REGISTRATION:

A. Prior to commencing operations, an operator of a well or wells in New Mexico shall register with the division as an operator. Applicants shall provide the following to the financial assurance administrator in the division's Santa Fe office:

(1) an oil and gas registration identification (OGRID) number obtained from the division, the state land office or the taxation and revenue department;

(2) a current address of record to be used for notice and a current emergency contact name and telephone number for each district in which the operator operates wells; and

(3) the financial assurance 19.15.8 NMAC requires.

B. Prior to commencing operations, an operator shall provide to the division a certification by a representative designated by the operator that within the past 10 years the new operator has not been subject to any final administrative forfeiture demand from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and has not been out of compliance with adjudicated order or settlement agreement with a state or federal agency for any state or federal violation related to oil and gas laws or regulations in any domestic jurisdiction in which the new operator does business; a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding twenty-five percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding twenty-five percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding twenty-five percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC.

[~~B.~~] C. The division may deny registration as an operator if:

(1) the applicant is not in compliance with Subsection A of 19.15.5.9 NMAC;

(2) the applicant within the past ten years has had a final administrative forfeiture demand from any state or federal agency, has forfeited financial assurance to any state or federal agency, or has been out of compliance with an adjudicated order or settlement agreement with a state or federal agency for any state or federal violation related to oil and gas laws or regulations in any domestic jurisdiction in which the applicant does business;

[~~(2)~~] (3) an officer, director, partner in the applicant or person with an interest in the applicant exceeding twenty-five percent, is or was within the past five years an officer, director, partner or person with an interest exceeding twenty-five percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

[~~(3)~~] (4) the applicant is or was within the past five years an officer, director, partner or person with an interest exceeding twenty-five percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; or

[**~~(4)~~**] **(5)** the applicant is a corporation, [~~or~~] limited liability company, limited liability limited partnership, or limited partnership and is not registered or is not in good standing with the [~~public regulation commission~~] New Mexico secretary of state to do business in New Mexico.

~~**[(5)** the applicant is a limited partnership and is not registered with the New Mexico secretary of state to do business in New Mexico.~~]

[~~C~~] D. An operator shall inform the division of its current address of record and emergency contact names and telephone numbers by submitting changes in writing to the division's financial assurance administrator in the division's Santa Fe office within 30 days of the change.

[~~D~~] E. ~~[The division may require an]~~ A representative designated by the operator [~~or applicant to~~] ~~[identify]~~ shall certify compliance annually of its current and past officers, directors and partners and its current and past ownership interest in other operators consistent with Paragraphs (2) and (3) of Subsection C of 19.15.9.8 NMAC.

[19.15.9.8 NMAC - Rp, 19.15.3.100 NMAC, 12/01/2008; A, TBD]

19.15.9.9 CHANGE OF OPERATOR:

A. A change of operator occurs when the entity responsible for a well or a group of wells changes. A change of operator may result from a sale, assignment by a court, a change in operating agreement or other transaction. Under a change of operator, wells are moved from the OGRID number of the operator of record with the division to the new operator's OGRID number.

B. The operator of record with the division and the new operator shall apply for a change of operator by jointly filing a form C-145 using the division's web-based online application. If the operator of record with the division is unavailable, the new operator shall apply to the division for approval of change of operator without a joint application. The new operator shall make such application in writing and provide documentary evidence of the applicant's right to assume operations; a certification by a representative designated by the operator of the new operator that within the past 10 years the new operator has not been subject to any final administrative forfeiture demand from any state or federal agency, has not forfeited financial assurance to any state or federal agency, and has not been out of compliance with an adjudicated order or settlement agreement with a state or federal agency for any state or federal violation related to oil and gas laws or regulations in any domestic jurisdiction in which the new operator does business; a plugging and abandonment plan; a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding twenty-five percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding twenty-five percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding twenty-five percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC. The new operator shall not commence operations until the division approves the application for change of operator. The plugging and abandonment plan shall be certified by a representative designated by the new operator and shall demonstrate that the new operator has and will have the financial ability to meet the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells to be transferred in light of all the operator's assets and liabilities. The division may request the operator to provide additional information including corporate credit rating, corporate financial statements, long-term liabilities, reserves and economics report, records of the operator's historical costs for decommissioning activities, estimate of the operator's decommissioning obligations, and history of inactive wells and returning wells to production.

C. The director or the director's designee may deny a change of operator if:

(1) the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC [~~or~~]

~~**[(2)** the new operator is acquiring wells, facilities or sites subject to a compliance order requiring remediation or abatement of contamination, or compliance with 19.15.25.8 NMAC, and the new operator has not entered into an agreed compliance order setting a schedule for compliance with the existing order~~].

(2) within the past 10 years the new operator has had a final administrative forfeiture demand from any state or federal agency, has forfeited financial assurance to any state or federal agency, or has been out of compliance with an adjudicated order or settlement agreement with a state or federal agency for any state or federal violation related to oil and gas laws or regulations in any domestic jurisdiction in which the new operator does business;

(3) any officer, director, partner in the new operator or person with an interest in the new operator exceeding twenty-five percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding twenty-five percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(4) the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding twenty-five percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(5) the applicant is a corporation, limited liability company, limited liability limited partnership, or limited partnership and is not registered or is not in good standing with the New Mexico secretary of state to do business in New Mexico; or

(6) the certification or disclosure requirements set forth in Subsection B of this section disclose a substantial risk that the new operator would be unable to satisfy the plugging and abandonment requirements of 19.15.25 NMAC for the well or wells the new operator intends to take over.

D. In determining whether to grant or deny a change of operator when the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC, the director or the director's designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having [~~more than the allowed number of~~ wells out of compliance with 19.15.25.8 NMAC]. If the non-compliance is caused by the operator having [~~more than the allowed number of~~] wells not in compliance with 19.15.25.8 NMAC, the director or director's designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

E. No well, facility or site that is out of compliance with Subsection A of 19.15.5.9 NMAC, 19.15.29 NMAC, or 19.15.30 NMAC shall be transferred unless, prior to transfer, the current operator brings the associated

well, facility or site into compliance or the new operator submits a schedule of compliance approved by the division.
[19.15.9.9 NMAC - Rp, 19.15.3.100 NMAC, 12/01/2008]; A, TBD

This is an amendment to 19.15.25 NMAC, Section 8, 9, 10, 11, 12, 13, 14, 15, 16, effective TBD.

19.15.25.8 WELLS TO BE PROPERLY ABANDONED:

A. The operator of wells drilled for oil or gas or services wells including seismic, core, exploration or injection wells, whether cased or uncased, shall plug the wells as Subsection B of 19.15.25.8 NMAC requires.

B. The operator shall either properly plug and abandon a well or apply to the division to place the well in approved temporary abandonment in accordance with 19.15.25 NMAC within [~~90~~] 60 days after:

(1) a 60 day period following suspension of drilling operations, except a well that has been drilled and properly cased but not completed for less than 18 months and a well that has been completed but has not produced for less than 18 months, unless the well is a dry hole;

(2) a determination that a well is no longer usable for beneficial purposes; or

(3) a period of one year in which a well has been continuously inactive.

[19.15.25.8 NMAC - Rp, 19.15.4.201 NMAC, 12/1/2008; A, TBD]

19.15.25.9 PRESUMPTIONS OF NO BENEFICIAL USE:

A. For oil and gas production wells, there is a rebuttable presumption that a well is not capable of beneficial use if, in a consecutive 12 month period, the well has not produced at least 90 barrels of oil equivalent.

B. For injection or salt water disposal wells, there is a rebuttable presumption that a well is not capable of beneficial use if, in a consecutive 12 month period, the well has not injected at least 100 barrels of fluid.

C. The rebuttable presumptions in this Section do not apply to wells that have been drilled but not completed for less than 18 months and wells that have been completed but have not produced for less than 18 months.

D. Within 30 calendar days after notice from the division that a well or wells are presumed to not being used for beneficial purposes, a well operator may submit an application for administrative review the division. Upon request by the operator, the division may use its discretion to grant an extension of the 30 day rebuttal period for good cause. The division shall issue a final determination based on the application, information available in division records, and any information requested by the division. An operator may file an application for hearing within 30 days of the division's final determination pursuant to 19.15.4 NMAC. Applications shall demonstrate beneficial use of a well or wells and the operator shall provide any information requested by the division. Such documentation may include:

(1) a demonstration that the well is reasonably projected to produce in an economically beneficial manner;

(2) a demonstration that the well has effectively produced or injected at least 90 days within the consecutive 12 month period and there is no downhole mechanical integrity problem;

(3) a demonstration that the operator maintains adequate capitalization or reasonably projected revenue sufficient to meet all reasonably anticipated plugging and environmental liabilities of the well or wells and associated production facilities, not inclusive of any financial assurance associated with the well or wells;

(4) a plugging and abandonment plan as described in 19.15.9.9.B NMAC; and

(5) other relevant information requested by the division or provided by the operator or a regulatory agency.

E. This subsection shall become effective 12 months after [the effective date of this rule], except that as to operators that the division determines are substantially out of compliance with 19.15.7.24 NMAC, 19.15.8.9 NMAC, or 19.15.25.8 NMAC, this subsection shall become effective on [the effective date of this rule].

[19.15.25.9 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008, A, TBD]

[~~**19.15.25.9**~~] **19.15.25.10 NOTICE OF PLUGGING:**

A. The operator shall file notice of intention to plug with the division on form C-103 prior to commencing plugging operations. The notice shall provide all the information 19.15.7.14 NMAC requires including operator and well identification and proposed procedures for plugging the well.

B. In addition, the operator shall provide a well bore diagram showing the proposed plugging procedure.

C. The operator shall notify the division 24 hours prior to commencing plugging operations. In the case of a newly drilled dry hole, the operator may obtain verbal approval from the appropriate district supervisor or the district supervisor's representative of the plugging method and time operations are to begin. The operator shall file written notice in accordance with 19.15.25.11 NMAC with the division within 10 days after the district supervisor has given verbal approval.

[19.15.25.10 NMAC - Rn, 19.15.25.9 NMAC, TBD]

[~~19.15.25.10~~] 19.15.25.11 **PLUGGING:**

A. Before an operator abandons a well, the operator shall plug the well in a manner that permanently confines all oil, gas and water in the separate strata in which they are originally found. The operator may accomplish this by using mud-laden fluid, cement and plugs singly or in combination as approved by the division on the notice of intention to plug.

B. The operator shall mark the exact location of plugged and abandoned wells with a steel marker not less than four inches in diameter set in cement and extending at least four feet above mean ground level. The operator name, lease name and well number and location, including unit letter, section, township and range, shall be welded, stamped or otherwise permanently engraved into the marker's metal. A person shall not build permanent structures preventing access to the wellhead over a plugged and abandoned well without the division's written approval. A person shall not remove a plugged and abandonment marker without the division's written approval.

C. The operator may use below-ground plugged and abandonment markers only with the division's written approval when an above-ground marker would interfere with agricultural endeavors. The below-ground marker shall have a steel plate welded onto the abandoned well's surface or conductor pipe and shall be at least three feet below the ground surface and of sufficient size so that all the information 19.15.16.8 NMAC requires can be stenciled into the steel or welded onto the steel plate's surface. The division may require a re-survey of the well location.

D. As soon as practical, but no later than one year after the completion of plugging operations, the operator shall:

(1) level the location;

(2) remove deadmen and other junk; and

(3) take other measures necessary or required by the division to restore the location to a safe and clean condition.

E. The operator shall close all pits and below-grade tanks pursuant to 19.15.17 NMAC.

F. Upon completion of plugging and clean up restoration operations as required, the operator shall contact the appropriate division district office to arrange for an inspection of the well and location.

[19.15.25.11 NMAC - Rn, 19.15.25.10 NMAC, TBD]

[~~19.15.25.11~~] 19.15.25.12 **REPORTS FOR PLUGGING AND [~~ABANDOMENT~~] ABANDONMENT:**

A. The operator shall file form C-105 as provided in 19.15.7.16 NMAC.

B. Within 30 days after completing required restoration work, the operator shall file with the division a record of the work done on form C-103 as provided in 19.15.7.14 NMAC.

C. The division shall not approve the record of plugging or release a bond until the operator has filed necessary reports and the division has inspected and approved the location.

[19.15.25.12 NMAC – Rn & A, 19.15.25.11 NMAC, TBD]

[~~19.15.25.12~~] 19.15.25.13 **APPROVED TEMPORARY ABANDONMENT:**

A. 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. An operator is limited to placing the following numbers of wells in approved temporary abandonment:~~

~~**A.** one well, if the operator operates between one and five wells; or~~

~~**B.** one-third of all wells (rounded to the nearest whole number), if the operator operates more than five wells.~~] upon a demonstration from the operator that the well will be used for beneficial use within the approved period of temporary abandonment.

(1) The operator's demonstration shall include an explanation why the well should be placed in temporary abandonment, how the well will be put to beneficial use in the future including supporting technical data, a plan that describes the ultimate disposition of the well, and the time frame for that disposition.

(2) The operator shall provide any other information the division determines appropriate, including a current and complete well bore diagram; geological evidence; geophysical data; well casing information; waste removal and disposition; production engineering; geophysical logs, e.g., cement bond logs, caliper logs, and casing inspection logs; economic data; and health, safety, and environmental information.

(3) If the division denies a request, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

B. 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 a period of up to two years in accordance with Subsection A of 19.15.25.13 NMAC and demonstrate the well's mechanical integrity in accordance with Sections 19.15.25.14 and 15 NMAC. A second term shall not exceed two additional years, upon which time the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

C. Extension.

(1) Prior to the expiration of a renewal 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 an extension to continue to place the well in temporary abandonment for a period of up to five years.

(2) To obtain an extension, the operator shall apply to the division to extend temporary abandonment status. The division shall provide at least 30 days' notice of the application for extension on its website and to the division mailing list. The operator, division, or other person with standing may request a hearing on the application for extension before the division. Any such hearing shall be conducted pursuant to the procedures for adjudicatory proceedings in 19.15.4 NMAC. If a hearing is not requested, the division shall proceed with processing the application for extension.

(a) To obtain an extension, the operator shall demonstrate to the division that the well has future beneficial use.

(b) The application for extension shall include:

(i) a plan of development for the well that includes documentation that the plan is technically feasible and financially viable;

(ii) a description of any work completed and in progress under the plan of development;

(iii) documentation demonstrating why the well was not brought back to beneficial use as had been proposed or plugged and abandoned during the prior period of temporary abandonment;

(iv) a plan that describes the ultimate disposition of the well including the time frame for that disposition; and

(v) documentation demonstrating the well's casing and cementing meet the requirements Sections 19.15.25.14 and 15 NMAC and that monitoring procedures are in place to ensure such requirements will be met and maintained during the period of temporary abandonment.

(c) The operator shall provide any other relevant information requested by the division including engineering information, geological information, financial information, and applicable contracts that support the future beneficial use.

(3) An operator may reapply for an extension for periods of up to five years under the same terms and conditions as provided for in this subsection. If the division denies a request for extension, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

D. An operator is limited to placing the following numbers of wells in approved temporary abandonment:

(1) one well, if the operator operates between one and five wells; or

(2) one-third of all wells (rounded to the nearest whole number), if the operator operates more than five wells.

E. Implementation schedule for existing wells.

(1) Inactive wells (that are not in approved or expired temporary abandonment). Wells that have been inactive as of [effective date of amendments] for less than three years are eligible for temporary abandonment status in accordance with Subsection A of this section. Wells that have been inactive for three or more years shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this section.

(2) Wells in approved temporary abandoned status. Any operator of a well in temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this section prior to the date temporary abandonment status terminates. Unless an operator of a well has renewed a temporary abandonment in accordance with this paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

(3) Wells in expired temporary abandoned status. Any operator of a well in expired temporary abandoned status as of [effective date of amendments] shall apply to the division to extend temporary abandonment status in accordance with Subsection B of this section. Unless an operator of a well has renewed a temporary abandonment in accordance with this paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

F. The timeframes Subsections A, B and C in this section shall be implemented consistent with any applicable federal requirements.

[19.15.25.13 NMAC – Rn & A, 19.15.25.12 NMAC, TBD]

[~~**19.15.25.13**~~] **19.15.25.14 REQUEST FOR APPROVAL AND PERMIT FOR APPROVED TEMPORARY ABANDONMENT:**

A. An operator seeking approval for approved temporary abandonment shall submit [~~a notice of intent~~] the request on form C-103 to seek approved temporary abandonment for the well setting forth the demonstration required in 19.15.25.13 NMAC and 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) noncontainment of well bore fluids to the atmosphere or 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~~] 19.15.25.15 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~~] 19.15.7.15 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.~~]

[19.15.25.14 NMAC – Rn & A, 19.15.25.13 NMAC, TBD]

[~~**19.15.25.14**~~] **19.15.25.15 DEMONSTRATING MECHANICAL INTEGRITY:**

A. An operator may use the following methods of demonstrating internal casing integrity for casing repairs and wells to be placed in approved temporary abandonment, for wells for which approved temporary abandonment is to be renewed, and for wells for which an extension is to be granted.

(1) the operator may set a cast iron bridge plug within 100 feet of uppermost perforations or production casing shoe, load the casing with inert fluid and pressure test to 500 psi surface pressure with a pressure drop of not more than ten percent over a 30 minute period;

(2) the operator may run a retrievable bridge plug or packer to within 100 feet of uppermost perforations or production casing shoe, and test the well to 500 psi surface pressure for 30 minutes with a pressure drop of not greater than ten percent over a 30 minute period; or

(3) the operator may demonstrate that the well has been completed for less than five years [~~and has not been connected to a pipeline~~].

B. During the testing described in Paragraphs (1) and (2) of Subsection A of [~~19.15.25.14~~] 19.15.25.15 NMAC the operator shall:

(1) open all casing valves during the internal pressure tests and report a flow or pressure [~~change~~] occurring immediately before, during or immediately after the 30 minute pressure test;

(2) top off the casing with inert fluid prior to leaving the location; and

(3) report flow during the test in Paragraph (2) of Subsection A of [~~19.15.25.14~~] 19.15.25.15 NMAC to the appropriate division district office prior to completion of the temporary abandonment operations; the division may require remediation of the flow prior to approving the well's temporary abandonment.

(4) Any isolation device used to test mechanical integrity pursuant to Subsection A of this section shall remain in place for the duration of the temporary abandonment.

(5) The operator shall perform a caliper log and casing integrity log. Taking into account the purpose and duration of the temporary abandonment, the division may waive this requirement upon a demonstration by the operator of the current and anticipated internal casing integrity of the well and that such integrity shall be maintained throughout the period of temporary abandonment.

C. An operator may use any method approved by the EPA in 40 C.F.R. section 146.8(c) to demonstrate external casing and cement integrity for wells to be placed in approved temporary abandonment.

D. The division shall not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal.

E. The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 1000 pound spring, which has been calibrated within the six months prior to conducting the test. Witnesses to the test shall sign the chart. The operator shall submit the chart, caliper log, and casing integrity log with form C-103 requesting approved temporary abandonment.

F. The division may approve other testing methods the operator proposes if the operator demonstrates that the test satisfies the requirements of Subsection B of [~~19.15.25.13~~] 19.15.25.14 NMAC.

[19.15.25.15 NMAC – Rn & A, 19.15.25.14 NMAC, TBD]

[~~19.15.25.15~~] 19.15.25.16 WELLS TO BE USED FOR FRESH WATER:

A. When a well to be plugged may safely be used as a fresh water well and the landowner agrees to take over the well for that purpose, the operator does not need to plug the well above the sealing plug set below the fresh water formation.

B. The operator shall comply with other requirements contained in [~~19.15.25.9~~] 19.15.25.10 NMAC through [~~19.15.25.11~~] 19.15.25.12 NMAC regarding plugging, including surface restoration and reporting requirements.

C. Upon completion of plugging operations, the operator shall file with the division a written agreement signed by the landowner whereby the landowner agrees to assume responsibility for the well. Upon the filing of this agreement and division approval of well abandonment operations, the operator is no longer responsible for the well, and the division may release bonds on the well.

[19.15.25.16 NMAC – Rn & A, 19.15.25.15 NMAC, TBD]