

**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.
- 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 Subsection D of 19.15.8.9 NMAC in one of the following categories:

(1) a one well financial assurance in the amount of \$25,000 plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well; 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 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. Inactive wells.** 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 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 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; or

(2) a blanket plugging financial assurance covering all wells of the operator subject to Subsection D of 19.15.8.9 NMAC:

- (a) \$150,000 for one to five wells;
- (b) \$300,000 for six to 10 wells;
- (c) \$500,000 for 11 to 25 wells; and
- (d) \$1,000,000 for more than 25 wells.

**E.** 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, 12/1/2008; 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.

**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]

#### **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.

[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 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.

(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, 6/30/2015]

**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, 6/30/2015]

**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.