

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

19.15.8.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.8.1 NMAC - N, 12/1/08]

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, 12/1/08]

19.15.8.3 STATUTORY AUTHORITY: 19.15.8 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11, Section 70-2-12 and Section 70-2-14.
[19.15.8.3 NMAC - N, 12/1/08]

19.15.8.4 DURATION: Permanent.
[19.15.8.4 NMAC - N, 12/1/08]

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, 12/1/08]

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, 12/1/08]

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.

[19.15.8.8 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

19.15.8.9 FINANCIAL ASSURANCE FOR WELL PLUGGING:

- A.** A person, firm, corporation or association who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well on privately-owned or state-owned lands within this state shall furnish a financial assurance acceptable to the division in the form of an irrevocable letter of credit or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with division rules.
- B.** A financial assurance shall be conditioned for well plugging and abandonment and location restoration and remediation only, and not to secure payment for damages to livestock, range, crops or tangible improvements or any other purpose.
- C.** The division accepts two forms of financial assurance: a one-well financial assurance that covers a single well and a blanket financial assurance that covers multiple wells. The operator shall cover a well that has been in temporary abandonment for more than two years by a one-well financial assurance, except that the division may waive the requirement of a one-well financial assurance for a well that is shut-in because of the lack of a pipeline connection. The division may release the one-well financial assurance upon the operator's or surety's written request after the well is returned to production if a blanket financial assurance covers the well.
- D.** Amounts.
 - (1)** A blanket financial assurance shall be in the amount of \$50,000 covering all oil, gas or service

wells drilled, acquired or operated in this state by the principal on the bond.

(2) A one-well financial assurance shall be in the amounts stated below in accordance with the well's depth and location.

(a) Chaves, Eddy, Lea, McKinley, Rio Arriba, Roosevelt, Sandoval and San Juan counties, New Mexico: \$5000 plus \$1 per foot of projected depth of proposed well or measured depth of existing well.

(b) All other counties in the state: \$10,000 plus \$1 per foot of projected depth of proposed well or measured depth of existing well.

(3) The appropriate division district office may approve revised plans for an actively drilling well for drilling as much as 500 feet deeper than the depth stated on the well's financial assurance. A well to be drilled more than 500 feet deeper than the depth stated on the well's financial assurance shall be covered by a new financial assurance in the amount prescribed for the new projected depth.

(4) The amount of the one-well financial assurance required for an intentionally deviated well shall be determined by the well's measured depth, and not its true vertical depth.

[19.15.8.9 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

19.15.8.10 ADDITIONAL REQUIREMENTS FOR CASH AND SURETY BONDS:

A. Surety bonds shall be issued by a reputable corporate surety authorized to do business in the state.

B. The operator shall deposit cash representing the full amount of the bond in an account in a federally-insured financial institution located within the state, such account to be held in trust for the division. Authorized representatives of the operator and the depository institution shall execute a document evidencing the cash bond's terms and conditions. The operator shall file the document with the division prior to the bond's effective date. If the operator's financial status or reliability is unknown to the director, the director may require the filing of a financial statement or such other information as may be necessary to evaluate the operator's ability to fulfill the bond's conditions. From time to time, any accrued interest over and above the bond's face amount may be paid to the operator.

[19.15.8.10 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

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.

[19.15.8.11 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

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, 12/1/08]

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 NMSA 1978, Section 70-2-14(E).

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, 12/1/08]

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.

[19.15.8.14 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

HISTORY of 19.15.8 NMAC:

History of Repealed Material: 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/08.

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 12/1/08.