

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 11 GEOTHERMAL RESOURCES DEVELOPMENT
PART 2 PERMITS

19.11.2.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Energy Conservation and Management Division.
[19.11.2.1 NMAC - N, 2/27/2018]

19.11.2.2 SCOPE: All persons who engage in the exploration, development or production of a geothermal resource.
[19.11.2.2 NMAC - N, 2/27/2018]

19.11.2.3 STATUTORY AUTHORITY: Geothermal Resources Development Act, Section 71-9-1 et seq. NMSA 1978 (2016).
[19.11.2.3 NMAC - N, 2/27/2018]

19.11.2.4 DURATION: Permanent.
[19.11.2.4 NMAC - N, 2/27/2018]

19.11.2.5 EFFECTIVE DATE: February 27, 2018, except where a later date is cited at the end of a section.
[19.11.2.5 NMAC - N, 2/27/2018]

19.11.2.6 OBJECTIVE: The objective of 19.11.2 NMAC is to require persons to obtain a permit prior to commencing exploration, development and production of geothermal resources and to establish procedures for application for and approval or denial of permits.
[19.11.2.6 NMAC - N, 2/27/2018]

19.11.2.7 DEFINITIONS: [RESERVED]
[See 19.11.1.7 NMAC for definitions.]
[19.11.2.7 NMAC – N, 2/27/2018]

19.11.2.8 INFORMATION TO STATE ENGINEER:

A. The division shall notify the office of state engineer when it receives an application for a geothermal well permit or geothermal facility permit.

B. When the applicant proposes to reinject all ground water as soon as practicable into the same ground water source from which it was diverted, resulting in no new depletion to the source, the division shall also provide the state engineer all information available to the division regarding the proposed diversion and reinjection and shall request the opinion of the state engineer as to whether existing ground water rights sharing the same ground water source may be impaired.

C. If the state engineer determines that the information provided is sufficient to render an opinion and it is the opinion of the state engineer that any existing ground water rights may be impaired, the division, upon receipt of the opinion of the state engineer, shall notify the applicant or permittee who shall submit to the division by the date specified in the notification a plan of replacement for any existing ground water rights that are likely to be impaired.

[19.11.2.8 NMAC - N, 2/27/2018]

19.11.2.9 PERMIT REQUIRED: Except as provided in 19.11.1.10 NMAC, no person shall explore, develop or produce a geothermal resource including drilling or operating an injection well except pursuant to and in accordance with the terms and conditions of a permit issued by the division under the Act. The applicant for a permit or permit modification, renewal or transfer shall be the person who has the right to produce the geothermal resource either through ownership, lease, permit or other right. The permittee is responsible for the actions of its officers, employees, consultants, contractors and subcontractors as they relate to the exploration, development or production of the geothermal resource. Any person who is involved in the exploration, development or production of a geothermal resource shall comply with the Act, 19.11.1 through 19.11.4 NMAC and the permit.
[19.11.2.9 NMAC - N, 2/27/2018]

19.11.2.10 APPLICATION TO DRILL, MODIFY OR OPERATE WELLS OR FACILITIES IN A GEOTHERMAL RESOURCE:

A. Application for a permit to drill an exploratory well or to drill or operate a production or observation well. Any person who proposes to drill or operate an exploratory, production or observation well shall first apply for a permit by filing a written application with the division. The applicant shall submit two paper copies and one electronic copy of the application. The applicant shall submit the information listed below in the application:

- (1) name and contact information of the owner or operator of the well and the drilling contractor and whether the owner or operator is a corporation, partnership, single proprietorship, association or other business entity and the names of the applicant's officers and directors;
- (2) name and contact information of the applicant's registered agent;
- (3) location of the proposed or existing well (UTM coordinates or latitude-longitude) and a map showing location and distances to property lines;
- (4) estimated or actual (if existing) top of well-elevation;
- (5) name and contact information of the surface land owner;
- (6) signature of a responsible official or designated agent of the applicant;
- (7) name and contact information of the geothermal resource owner and documentation such as deeds, leases, permits or other documentation showing applicant has the authority or right to produce the geothermal resource;
- (8) for production wells, actual (when available) or estimated data regarding the physical characteristics of the geothermal resource including volume, temperature, permeability, thermal capacity and water quality of both the geothermal resource waters and any fresh water resources in the proposed drilling area;
- (9) whether the applicant proposes to reinject all ground water as soon as practicable into the same ground water source from which it was diverted, resulting in no new depletion to the source and information regarding the proposed diversion and reinjection;
- (10) a map and accompanying list showing the names, addresses and locations of adjacent landowners within one-half mile of the proposed geothermal well or facility; the location of water wells within one mile of the proposed geothermal well or facility; the names, addresses and locations of any geothermal resource owners or lessees currently owning or leasing a geothermal resource within five miles of the proposed geothermal well or facility; and the names, addresses and locations of any local, state, federal or tribal government property within five miles of the proposed geothermal well or facility;
- (11) a statement of the purpose and estimated or actual (if existing) depth of the well;
- (12) for production wells, the proposed production rate of geothermal resource waters;
- (13) a description of the geothermal well construction, BOPE and the drilling rig;
- (14) a description of the logging, coring and testing program;
- (15) plans for providing financial assurance prior to permit issuance pursuant to 19.11.2.18 NMAC;
- (16) pit information pursuant to 19.11.4.17 NMAC;
- (17) methods for disposal of geothermal resources, residue of geothermal resources or nondomestic waste from the exploration, development or production of geothermal resources pursuant to 19.11.4.20 NMAC;
- (18) a geothermal well plugging and abandonment plan, including a responsible third-party contractor's cost estimate, sufficient to plug and abandon the wells in a manner that will protect life, health, property, natural resources, the environment and the public welfare, and comply with the requirements contained in 19.11.4.16 NMAC;
- (19) a statement of whether the applicant or any subsidiary, affiliate or person controlled by or under common control with the applicant
 - (a) has had a federal or state UIC or geothermal drilling or operating permit suspended or revoked in the five years preceding the date of the application's submission; or
 - (b) has forfeited a performance bond or similar security deposited in lieu of bond; and
 - (c) a brief explanation of the facts involved if any such suspension, revocation or forfeiture referred to in Subparagraphs (a) and (b) of Paragraph (19) of Subsection A of 19.11.2.10 NMAC has occurred, including:
 - (i) the permit's identification number and issuance date, and the date and

amount of bond or similar security involved;

- (ii) identification of the authority that suspended or revoked the permit or forfeited the bond or similar security and the stated reasons for the action;
- (iii) the status of the permit, bond or other security involved;
- (iv) the date, location and type of any administrative or judicial proceedings initiated concerning the suspension, revocation or forfeiture; and
- (v) the proceeding's status; and

(20) a listing of all violation notices the applicant has received relating to any UIC or geothermal drilling or operation during the three-year period before the application date; for each violation notice reported include the following information as applicable:

- (a) any identifying number for the operation including the federal or state permit number, the violation notice's issuance date, the name of the person or entity to whom the violation notice was issued and the name of the issuing regulatory authority, department or agency;
- (b) a brief description of the violation alleged in the notice;
- (c) the date, location and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person or entity to obtain administrative or judicial review of the violation;
- (d) the status of the proceedings and of the violation notice; and
- (e) the actions, if any, taken by any person identified in Paragraph (20) of

Subsection A of 19.11.2.10 NMAC to abate the violation.

B. Application for permit to drill or operate an injection well. Any person who proposes to drill or operate an injection well shall first apply for a permit by filing a written application with the division. The applicant shall submit two paper copies and one electronic copy of the application. The items listed below along with the items listed in Subsection A of 19.11.2.10 NMAC are required:

- (1) a description of the well construction, or proposed well construction, and the proposed method for testing the well before the well is used for injection;
- (2) the estimated maximum injection pressure, mass flowrate and temperature;
- (3) an analysis of the proposed injection fluid; and
- (4) a description of the proposed pipelines, metering equipment and safety devices that will be used to prevent accidental pollution.

C. Application for a geothermal facility with multiple geothermal wells. Any person who proposes to drill or operate multiple geothermal wells and operate a geothermal facility on an applicant's geothermal lease shall apply for a multi-well geothermal facility permit. The applicant shall submit two paper copies and one electronic copy of the application. The items listed below along with the items listed in Subsections A and B of 19.11.2.10 NMAC are required:

- (1) a description of surface equipment and site plan, with proposed topography, of the power generating facility and associated well field with proposed and existing wells identified; and
- (2) a facility closure plan, including a responsible third-party contractor's cost estimate, sufficient to close the facility in a manner that will protect life, health, property, natural resources, the environment and the public welfare, and comply with the closure requirements contained in 19.11.4 NMAC.

D. Application to modify or renew a permit. Any permittee who proposes to modify an individual geothermal well permit or a geothermal facility permit or renew an existing permit (individual or facility) shall first apply for a permit modification or permit renewal by filing a written application with the division. The permittee shall file an application to renew a permit one year prior to the expiration date of the current permit. All applications to modify or renew a permit shall follow the applicable requirements listed in Subsections A, B or C of 19.11.2.10 NMAC unless the modification is a minor permit modification or is approved under the permittee's notification requirements and requests for approval to division conditions listed in 19.11.4.9 NMAC. A minor permit modification includes:

- (1) change in owner of the geothermal lease or geothermal interest;
- (2) change in well name;
- (3) change in previously proposed location of a well that is within the approved area of a geothermal well or facility permit;
- (4) change in status of an injection well to another type of well;
- (5) changing the construction of an injection well, including placing a plug in the hole or well and recovering or altering the casing;
- (6) adding wells to a geothermal facility permit that have been approved previously per

Subsections A or B of 19.11.2.10 NMAC;

(7) creation of a geothermal facility permit that includes only wells and equipment permitted previously under 19.11.2 NMAC;

(8) permitting of equipment that has been permitted or approved prior to the promulgation of 19.11.2 NMAC; the permittee may, upon promulgation of 19.11.2 NMAC, apply to permit all currently operating and previously approved geothermal wells and facilities under 19.11.1 through 19.11.4 NMAC pursuant to the minor permit modification procedures in Subsection E of 19.11.2.10 NMAC; and

(9) for an injection well permit or for that portion of a geothermal facility permit that pertains to injection wells, a modification listed under 40 CFR 144.41.

E. Notification of application for minor permit modification or activity taken pursuant to 19.11.4.9 NMAC. When requesting approval of a minor permit modification or prior to taking an action listed in Paragraph (3) of Subsection A or Paragraphs (3), (6), (8) or (10) of Subsection B of 19.11.4.9 NMAC, the permittee shall provide written notification to the adjacent surface owners within one-half mile, water rights owners with a well that is within one mile and any geothermal resource owners or lessees within five miles of the geothermal well or facility.

F. Application for a minor permit modification. Any permittee who proposes a minor permit modification shall submit a written request, to the division, that fully explains the proposed modification and all information required to implement the requested change. The permittee may apply for approval of the activity listed in Paragraph (3) of Subsection D of 19.11.2.10 NMAC up to 30 days after the action.

G. Pre-application meeting. Any person who proposes to submit a permit application to the division may request a pre-application meeting with division staff.

H. Transfer of a permit.

(1) The permittee shall not transfer a permit without the division's prior written approval. If the transferee wants to change the conditions of the original permit, it shall apply for a new permit pursuant to 19.11.2.10 NMAC. Unless the division otherwise orders, public notice or hearing are not required for the division to approve a transfer request. If the division denies the transfer request, it shall notify the permittee and the proposed transferee of the denial by certified mail, return receipt requested and either the permittee or the proposed transferee may request a hearing within 10 days after receipt of the notice. Until the division approves the transfer and the required financial assurance is in place, the division shall not release the transferor's financial assurance.

(2) If the transferee will conduct operations in full compliance with the terms and conditions of the original permit, the transferee shall provide the division with the following information:

(a) name and contact information of the owner or operator of the well or facility and a statement as to whether the applicant is a corporation, partnership, single proprietorship, association or other business entity and the names of the transferee's officers and directors;

(b) name and contact information of the transferee's registered agent;

(c) the signature of a responsible official or designated agent of the transferee on the transfer request;

(d) proof that the transfer complies with the terms of any deed, lease or permit;

(e) a statement that the transferee will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless the transferee applies for a new permit; and

(f) plans for providing sufficient financial assurance to cover the original permit in its entirety from inception to completion of plugging and abandonment prior to the transfer.

(3) Nothing in 19.11.2 NMAC shall be construed to relieve any person of responsibility or liability for any act or omission that occurred while that person owned, controlled or was in possession of the well or facility.

[19.11.2.10 NMAC - N, 2/27/2018]

19.11.2.11 CHANGING, SUPPLEMENTING OR CORRECTING APPLICATIONS:

A. Prior to the division's final decision on an application, the applicant shall have a duty to promptly supplement and correct information submitted in the application. The duty to supplement shall include relevant information thereafter acquired or otherwise determined to be relevant.

B. The process provided in 19.11.2.10 NMAC is not intended to limit informal informational exchanges during the application review period or prior to submission of an application. The process also does not prohibit an applicant from withdrawing an application and submitting a new application.

[19.11.2.11 NMAC - N, 2/27/2018]

19.11.2.12 PERMIT DECISIONS AND APPEALS:

A. The division shall, in a timely manner after its receipt of an application for a permit, or modification or renewal of a permit, evaluate such application and determine whether it is acceptable for review. An application that is acceptable for review is one that includes the information 19.11.2.10 NMAC requires. If the division deems the application:

- (1) acceptable for review, the division shall send a letter by e-mail and physical mail to the applicant notifying that applicant that the division will review the application;
- (2) not acceptable for review, the division shall send a letter by e-mail and physical mail to the applicant stating what additional information or points of clarification are necessary to deem the application acceptable for review; upon receipt of the additional information or clarification, the division shall promptly review such information and determine whether the application is acceptable for review;
- (3) acceptable for review but no permit is required, the division shall send a letter by e-mail and physical mail to the applicant informing the applicant of the determination.

B. Upon completion of the division's review of the application, the division shall either issue a draft permit or notice of intent to deny the application. A notice of intent to deny the application is a type of draft permit and follows the same procedure as a draft permit under 19.11.2 NMAC.

C. For draft permits for injection wells or facilities that include injection wells, the division shall prepare a fact sheet that includes a brief description of the type of facility or activity that is the subject of the draft permit; the type and quantity of wastes, fluids or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted or discharged; a brief summary of the basis for the draft permit conditions including references to the administrative records; reasons why any requested variances or alternatives to required standards do or do not appear justified; a description of the procedures for reaching a final decision on the draft permit including the beginning and ending dates of the comment period and the address where comments will be received, procedures for requesting a hearing and the nature of that hearing and any other procedures by which the public may participate in the final decisions; the name and telephone number of a person to contact for additional information; and justification for waiver of any application requirements.

D. If after the applicant provides public notice as required in 19.11.2.13 NMAC, no requests for hearing are filed with the division within the 30 day public notice period as provided by 19.11.3.8 NMAC, or any such requests for hearing are filed by persons the division determines are not affected persons and the division does not otherwise schedule a hearing pursuant to 19.11.3.8 NMAC, the division's draft permit shall become final and the division, after receipt of acceptable financial assurance submitted by the applicant pursuant to 19.11.2.18 NMAC, shall issue the permit.

E. The division shall grant the permit or deny the permit based on information contained in the division's administrative record. The administrative record shall consist of the application, any other evidence the applicant submitted, any technical evidence or substantive written comments any person other than the division submitted, any other evidence considered by the division, a statement of matters officially noticed and, if a hearing is held, the evidence submitted at the hearing. The applicant has the burden of demonstrating that a permit or permit modification should be approved. If the division issues a permit, it shall issue a response to comments. The response to comments shall specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change, and briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. The response to comments shall be available to the public.

F. A person subject to a final decision of the division may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.
[19.11.2.12 NMAC - N, 2/27/2018]

19.11.2.13 PUBLIC NOTICE FOR PERMIT ACTIONS INVOLVING A GEOTHERMAL WELL OR FACILITY: Except for Paragraphs (1) and (2) of Subsection A of 19.11.2.13 NMAC, 19.11.2.13 NMAC does not apply to permit actions pursuant to Subsection E of 19.11.2.10 NMAC or other approvals pursuant to 19.11.4.9 NMAC.

- A.** The division shall:
- (1) make available for public inspection a list of all pending applications for permits or permit modifications or renewals;
 - (2) make available for public inspection the permit application and the division's draft permit and supporting analysis documentation; this material shall be available at the division's office; except those portions

of which may be determined as confidential in accordance with 19.11.1.8 NMAC or the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978 (1993, as amended);

(3) subsequent to the division's production of a draft permit and supporting documentation, publish a public notice, on the division's website, which shall include: the division's name and address; the applicant's name and address, the location and brief description of the well or facility, a scope of the proposed operation and the division's preliminary intent to issue the permit at the end of the public notice period barring any substantive comments or new information or a permit hearing; the public notice shall identify the location of the permit application and division's draft permit and supporting analysis documentation for public review and describe the manner in which comments or evidence may be submitted to the division, including that persons must provide written comments or evidence to the division before the end of the 30 day public notice period; and a statement of the procedures for requesting a hearing on the application pursuant to 19.11.3.8 NMAC;

(4) provide the public notice under Paragraph (3) of Subsection A of 19.11.2.13 NMAC by mail, which may include e-mail, to the applicant;

(5) deliver written notice by ordinary first class United States mail to federal and state agencies with jurisdiction over fish and wildlife resources and state and tribal historic preservation officers;

(6) deliver written notice by ordinary first class United States mail to the EPA and any agency which the division knows has issued or is required to issue a Resource Conservation and Recovery Act permit, an air quality permit, a national pollutant discharge elimination system permit, 404 permit or sludge management permit for the same facility or activity;

(7) deliver written notice by ordinary first class United States mail to any unit of local government having jurisdiction over the area where the well or facility is to be located and to any state agency have authority with respect to the construction or operation of the well or facility;

(8) deliver written notice by ordinary first class United States mail or e-mail to each person who has requested in writing to be notified of such permit applications, modifications or renewals;

(9) deliver written notice by ordinary first class United States mail or e-mail to persons on a mailing list developed by the division including those who request in writing to be on the list, soliciting persons for "area lists" from participants in past permit proceedings in that area and notifying the public of the opportunity to be put on the mailing list through periodic publications in the public press, etc.; and

(10) publishing notice in a newspaper of general circulation in the county where the geothermal well or facility is located or is proposed to be located or in a newspaper of general circulation in the state.

B. The applicant shall:

(1) upon receipt of the division's public notice, provide written notice, by certified mail, return receipt requested, of the division's public notice to the adjacent surface owners within one-half mile, water rights owners with a well that is within one mile and any geothermal resource owners or lessees within five miles of the geothermal well or facility;

(2) mail notice by ordinary first class United States mail or e-mail to all local, state, federal or tribal governmental agencies that own property within five miles of the geothermal well or facility; and

(3) provide the division with proof that the applicant has met the public notice requirements of Paragraphs (1) and (2) of Subsection B of 19.11.2.13 NMAC prior to the division scheduling a hearing, if any, pursuant to 19.11.3.8 NMAC or issuing the permit.

[19.11.2.13 NMAC - N, 2/27/2018]

19.11.2.14 BASIS FOR DENIAL OF PERMIT: The division shall deny an application for a permit or permit modification or renewal if the construction or operation of the geothermal well or facility will not or does not comply with the Act or the rules promulgated pursuant to the Act.

[19.11.2.14 NMAC - N, 2/27/2018]

19.11.2.15 PERMIT CONDITIONS:

A. The contents of the application specifically identified by the division shall become terms and conditions of the permit or permit modification.

B. The division shall, as appropriate, specify conditions upon a permit, including:

(1) placement of geothermal wells in accordance with the location limitations in 19.11.4.8 NMAC;

(2) financial assurance requirements in accordance with 19.11.2.18 NMAC;

(3) well-construction in accordance with 19.11.4.10 NMAC;

- (4) blowout prevention requirements in accordance with 19.11.4.11 NMAC;
- (5) operating limitations in accordance with 19.11.4.12 NMAC;
- (6) testing and monitoring requirements in accordance with 19.11.4.13 NMAC;
- (7) recordkeeping and reporting requirements in accordance with 19.11.4.14 NMAC;
- (8) surface facility requirements in accordance with 19.11.4.15 NMAC;
- (9) abandonment requirements in accordance with 19.11.4.16 NMAC;
- (10) pit design, construction and operating plan and closure remediation plan requirements in accordance with 19.11.4.17 NMAC;
- (11) disposal requirements in accordance with 19.11.4.20 NMAC; and
- (12) other operational requirements, including additional testing, monitoring, recordkeeping and reporting or construction requirements deemed necessary to protect life, health, correlative rights, property, natural resources, the environment or the public welfare.

C. Any term or condition imposed by the division on a permit or permit modification is enforceable to the same extent as a rule.

D. The permit term for all permits shall not exceed 10 years.
[19.11.2.15 NMAC - N, 2/27/2018]

19.11.2.16 PERMIT CANCELLATION, TERMINATION AND MODIFICATION:

A. The division shall automatically cancel any permit for any well that has been plugged and abandoned or any facility that has been closed in accordance with the requirements of 19.11.4 NMAC and the permit.

B. The division may terminate or modify a permit during its term, or deny a permit renewal application, by following the procedures in 19.11.2.12 NMAC, for the following causes:

- (1) the permittee's noncompliance with any condition of the permit or 19.11.4 NMAC;
- (2) the permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
- (3) a determination that the permitted activity has a reasonable likelihood to endanger life, health, property, natural resources (including geothermal and fresh water resources), the environment or the public welfare and can only be regulated to acceptable levels by permit modification or termination;
- (4) a determination that the permitted activity is not protective of correlative rights of other geothermal resource leaseholders or owners;
- (5) a determination that hazardous waste as defined in 40 CFR 261.3 is being injected into an injection well either because the definition has been revised, or because a previous determination has been changed.

C. The division may modify a permit for the following causes:

- (1) there are material and substantial alterations or additions to the permitted well, facility or activity that occurred after permit issuance that justify the application of permit conditions that are different or absent in the existing permit;
- (2) the director has received information that was not available at the time of permit issuance (other than revised regulations or rules, guidance or test methods) and would have justified the application of different permit conditions at the time of issuance, including, for geothermal facility permits, any information indicating that cumulative effects on the environment are unacceptable;
- (3) the standards or regulations or rules on which the permit was based have been changed by promulgation of new or amended standards or regulations or rules or by judicial decision after the permit was issued;
- (4) the director determines good cause exists for modification of a compliance schedule such as an act of God, strike, flood or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

D. Interested persons may request that a permit be modified or terminated. However, the director may only modify or terminate permits for the reasons specified in Subsection B of 19.11.2.16 NMAC. If the director decides the request is not justified, he or she shall send the requestor a brief written response giving a reason for the decision. Denials of requests for modification or termination are not subject to public notice, comment or hearings.

E. If the director decides to modify a permit, the director shall issue a draft permit and publish notice pursuant to 19.11.2.12 NMAC and 19.11.2.13 NMAC.
[19.11.2.16 NMAC - N, 2/27/2018]

19.11.2.17 CORRECTIVE ACTION:

A. Applicants for injection well permits or for geothermal facility permits that include injection wells shall identify the location of all known wells (applicant's wells or wells of other parties), within a two-mile radius of the injection well, that penetrates the injection zone. For wells that are improperly sealed, completed or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into underground sources of fresh water ("corrective action"). Where the plan is adequate, the division shall incorporate it into the permit as a condition. Where the division's review of an application indicates that the applicant's plan is inadequate, the division shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit or deny the application. An applicant may request a hearing, pursuant to 19.11.3.8 NMAC, regarding the corrective action plan or the denial of the corrective action plan.

B. No permittee of a new injection well or for a geothermal facility permit that includes a new injection well may begin injection until the permittee has taken all required corrective action. Any permit issued for or that includes an existing injection well requiring corrective action shall include a compliance schedule requiring the permittee to complete any corrective action accepted or prescribed under Subsection A of 19.11.2.17 NMAC as soon as possible.

C. A permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from non-compliance with the permit.
[19.11.2.17 NMAC - N, 2/27/2018]

19.11.2.18 FINANCIAL ASSURANCE FOR GEOTHERMAL WELLS AND FACILITIES: Upon notification by the division that it has approved a new geothermal well or facility permit, a geothermal well or facility permit modification or a geothermal well or facility renewal permit but prior to issuing the permit, an applicant shall submit acceptable financial assurance for the geothermal well or facility affected by the permit action.

A. The applicant shall submit acceptable financial assurance in the amount of the plugging and abandonment cost for each geothermal well being permitted or, if permitting a geothermal facility, the estimated closure cost of the entire facility, including the plugging and abandonment costs for all geothermal wells and pits. The geothermal well's estimated plugging and abandonment cost or the geothermal facility's estimated closure cost shall be the amount provided in the plugging and abandonment or closure plan the applicant submitted with its application unless the division determines that such estimate does not reflect a reasonable and probable well plugging and abandonment or facility closure cost, in which event, the division shall determine the estimated well plugging and abandonment or facility closure cost and shall include such determination in its draft permit. If the applicant disagrees with the division's determination of estimated well plugging and abandonment or facility closure cost, the applicant may request a hearing as provided in 19.11.3.8 NMAC. If the applicant so requests, and no other person files a request for a hearing regarding the application, the hearing shall be limited to determination of well plugging and abandonment or facility estimated closure cost.

B. Terms of financial assurance. The financial assurance shall be on division-prescribed forms, payable to the state of New Mexico and conditioned upon the geothermal well's or facility's proper operation, and proper well plugging and abandonment or facility closure in compliance with state of New Mexico statutes, division rules and the geothermal well or facility permit terms. The permittee shall notify the division of a material change affecting the financial assurance within 30 days of discovery of such change.

C. Forfeiture of financial assurance. The division shall give the permittee and any surety 20 days' notice and an opportunity for a hearing prior to forfeiting financial assurance.

D. Forms of financial assurance. The division may accept the following forms of financial assurance.

(1) **Surety bonds.** A surety bond shall be executed by the applicant and by a corporate surety licensed to do business in the state, and shall be non-cancelable.

(2) **Letters of credit.** A letter of credit shall be issued by a bank organized or authorized to do commercial banking business in the United States, shall be irrevocable for a term of not less than 10 years and 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 90 days before its expiration date. The letter of credit shall be payable to the state of New Mexico in part or in full upon receipt from the director or the director's authorized representative of demand for payment accompanied by a notice of forfeiture.

(3) **Cash accounts.** An applicant may provide financial assurance in the form of a federally insured or equivalently protected cash account or accounts in a financial institution, provided the operator and the financial institution shall execute as to each such account a collateral assignment of the account to the division,

which shall provide that only the division may authorize withdrawals from the account. In the event of forfeiture pursuant to Subsection C of 19.11.2.18 NMAC, the division may, at any time and from time to time, direct payment of all or part of the balance of such account (excluding interest accrued on the account) to itself or its designee for the well's plugging and abandonment or facility's closure.

E. Replacement of financial assurance.

(1) The division may allow a permittee to replace existing forms of financial assurance with other forms of financial assurance that provide equivalent coverage.

(2) The division shall not release existing financial assurance until the permittee has submitted, and the division has approved, an acceptable replacement.

[19.11.2.18 NMAC - N, 2/27/2018]

HISTORY of 19.11.2 NMAC: [RESERVED]