

NMAC

Transmittal Form

NEW MEXICO
Commission of Public Records
at the State Records Center and Archives
Your Access to Public Information

FILED WITH
STATE RECORDS CENTER

2018 DEC 27 AM 10:46

Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: (ALD Use Only) Most recent filing date:
New Amendment Repeal Emergency Renumber

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment): Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes No Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes No Public domain

Concise Explanatory Statement For Rulemaking Adoption:

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Continued on next page

7/1/2018

Findings required for rulemaking adoption:
continued

[Empty box for findings]

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Heather Riley

Check if authority has been delegated

Title:

Oil Conservation Commission Chair

Signature: (BLACK ink only)

Heather Riley

Date signed:

12/27/18

2018 DEC 27 AM 10:47

STATE OF NEW MEXICO
ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF PROPOSED AMENDMENTS TO THE
COMMISSION'S RULES ON FINANCIAL ASSURANCE AND
PLUGGING AND ABANDONMENT OF WELLS,
19.15.2, 19.15.8 AND 19.15.25 NMAC; STATEWIDE

CASE NO. 16078
ORDER NO. R-14834-B

ORDER OF THE COMMISSION

THIS MATTER came before the New Mexico Oil Conservation Commission ("Commission") on the application of the Oil Conservation Division of the Energy, Minerals and Natural Resources Department ("OCD") to amend Rules 19.15.2, 19.15.8 and 19.15.25 NMAC. The Commission, having conducted a hearing on July 19 and 20, 2018, and a limited rehearing on November 15, 2018, and deliberated in open session following the hearing, and having considered the testimony, the record, and the arguments of the parties, and being otherwise fully advised, withdraws Order No. R-14834 and enters the following findings, conclusions, and order.

THE COMMISSION FINDS THAT:

1. **Statutory Authority.** The Commission is authorized to adopt rules, after a hearing, under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -38 (1935, as amended through 2018) ("Act"). NMSA 1978, § 70-2-12.2 (2015). The Commission and OCD are given the duty to prevent waste and protect correlative rights and to make and enforce rules to carry out the purpose of the Act NMSA 1978, § 70-2-11, and are specifically authorized to make rules to require abandoned wells to be plugged and to require financial assurance for the performance of such rules. NMSA 1978, § 70-2-12(B)(1).

2. The Act specifies the requirements for types and amounts of acceptable financial assurance and requires the adoption of rules to establish amounts. NMSA 1978, § 70-2-14 (2018). A well operator must provide financial assurance for each well either with a one-well plugging financial assurance in an amount "determined sufficient to reasonably pay the cost of plugging the wells", or with a blanket plugging financial assurance. The blanket plugging financial assurance for active wells had been capped by the Legislature at \$50,000. *Id.* In 2018, the Legislature amended Section 70-2-14 to increase the cap for a blanket financial assurance to \$250,000 and required that the amounts for a blanket plugging financial assurance be set by rule. Laws 2018, ch. 16.

3. **Application and Notice.** OCD filed an Application on March 28, 2018, to amend 19.15.2, 19.15.8 and 19.15.25 NMAC, which rules relate to financial assurance and

plugging and abandonment of wells ("proposed rule change"). The Application included a draft of the proposed rule change and a proposed legal notice. 19.15.3.8(A) NMAC.

4. At a public meeting on April 12, 2018, the Commission determined to hold a hearing on the proposed rule change and scheduled the hearing to begin on May 24, 2018. 19.15.3.8(C) NMAC. The Commission later continued the commencement of the hearing to July 19, 2018.

5. Notice of the rulemaking and of the date, time, and place of the hearing was provided as required by NMSA 1978, § 14-4-5.2 (2017) and 19.15.3.9 NMAC, including publication in the New Mexico Register on April 24, 2018. (OCD exh. 2).

6. Pre-hearing statements were submitted by OCD and the Independent Petroleum Association of New Mexico ("IPANM"). OCD proposed technical witnesses for the hearing; IPANM did not propose any technical witnesses. In its pre-hearing statement, IPANM offered modifications to the proposed rule changes. The OCC did not receive any written submittals, other than those submitted in the hearing process.

7. Proposed Rule Change. The applicant, OCD, proposed to amend rules 19.15.2, 19.15.8 and 19.15.25 NMAC. The proposed rule change adds the following provisions:

(a) Blanket Financial Assurance: To implement the higher cap enacted by the Legislature, OCD proposed a ladder of blanket bond amounts with steps at \$50,000, \$75,000, \$125,000 and \$250,000 depending on the total number of wells operated by the company on the bond. The amounts of blanket plugging financial assurance for wells in temporarily abandoned status are not changed.

(b) Single Well Financial Assurance: To meet the statutory requirements that one-well financial assurance must be "sufficient to reasonably pay the cost of plugging the wells", OCD proposed to increase the financial assurance amount for a single well. The current formula of \$5000 or \$10,000 per well plus \$1 per foot is increased to \$25,000 per well and \$2 per foot. The current system of two formulas based on the location within the state is replaced by a single formula. In 19.15.2 NMAC, OCD proposed to add definitions for the terms "measured depth" and "true vertical depth", which terms are employed in the formulas.

(c) Approved Temporary Abandonment: OCD proposed to amend 19.15.25 NMAC to limit the percentage of wells that an operator can place in approved temporary abandonment. An operator would not be permitted to place more than one-third of all its wells in approved temporary abandonment. The proposal also required that an operator must comply with the financial assurance requirements for temporarily abandoned wells under 19.15.8 NMAC before the well can receive a permit for approved temporary abandonment.

(d) Transition Provision: OCD proposed that the new financial assurance requirements will apply immediately to all permit applications to drill, deepen or plug back

a well or for approved temporary abandonment. For all other wells, the effective date of the new requirements would be delayed approximately 3 months.

8. Public hearing. The Commission commenced a public hearing on the proposed rule changes that began on July 19, 2018, and continued until July 20, 2018. The Commission completed deliberations on July 20, 2018.

9. OCD presented Allison Marks and Philip Goetze as technical witnesses. No other technical witnesses were presented by the parties. Each technical witness was subject to cross-examination by the other parties and by the Commissioners and Commission Counsel.

10. The OCD witnesses explained the purposes of the proposed rule change. The primary purpose is to implement changes to the Act enacted in 2018, to amend financial assurance requirements to reflect the goals of the Act and to prevent the overuse of approved temporary abandonment. The Act was amended in 2018 to increase the cap on blanket financial assurance for active wells from \$50,000 to \$250,000. Laws 2018, ch. 16, §2. The amendments to the Act require that the amounts be set by rule. Laws 2018, ch. 16, §2. The proposed rule change also amends the formula for a one well financial assurance to meet the requirement in the Act that a one well plugging financial assurance be "in amounts determined sufficient to reasonably pay the costs of plugging the wells." NMSA 1978, §70-2-14(A). Finally, the proposed amendments to the temporary abandonment rules are designed to limit the percentage of wells that an operator can place in approved temporary abandonment and to link the approval with the requirements for financial assurance. (Marks testimony).

11. The OCD witnesses went through each of the provisions to explain the changes. The proposal to implement the Legislative change to blanket plugging financial assurance provides for a tiered approach with blanket bonds at \$50,000 for operators with one to ten wells, \$75,000 for operators with eleven to fifty wells, \$125,000 for operators with fifty-one to one hundred wells and \$250,000 for operators with more than one hundred wells. The tiered approach follows what the Commission had adopted in 2015 for blanket plugging financial assurance for temporarily abandoned status wells. 19.15.8.9(D) NMAC. The proposal increases the amount of financial assurance available to the State if an operator fails to comply with the requirements to plug and abandon their wells. (Marks testimony).

12. The proposal to increase the amount of the one well financial assurance is based on data from the last 4 years of actual plugging costs incurred by OCD. (OCD exh. 6). The current formula in the rule does not accurately reflect the actual costs. OCD provided data and charts demonstrating how the proposed formula (\$25,000 plus two dollars per foot of the depth of the well) fit the actual costs of plugging wells at various depths. OCD also proposed to eliminate the use of two different formulas for different areas of the State. (Marks testimony; OCD exh. 3-5, 9, 10).

13. The proposal adds new definitions of "measured depth" and "true vertical depth" that are used in the calculation of the one well financial assurance amount. Given the variation in the types of wells now employed by operators, different calculations of

depth are used for vertical and horizontal wells (true vertical depth) and for deviated and directional wells (measured depth). OCD explained the methods and the reasoning for using each in different situations. (Goetze testimony; OCD exh. 8). In response to concerns raised by the Commission, OCD offered a slightly revised definition of "true vertical depth". (OCD exh. 12).

14. The OCD proposal amends 19.15.25 NMAC ("Plugging and Abandonment of Wells") to (a) limit the percentage of wells that an operator can place into approved temporary abandonment status and (b) link the approval of temporary abandonment with the change in financial assurance required by the Act and Rules. Under the Rules, OCD can permit a well to be in approved temporary abandonment if the well has been inactive for fifteen months and the well meets certain requirements. This status allows the well to remain inactive without being permanently plugged. OCD presented evidence on operators that are currently out of compliance with the inactive well rules and the risks those operators pose. (Marks testimony; OCD exh. 7). Operators with a high percentage of inactive wells pose the greatest threats. The OCD proposal would limit the number of wells that could receive approved temporary abandonment to one-third of the total number of wells. OCD provided amended language for this proposal. (OCD exh. 12)

15. OCD proposed to add a financial assurance requirement to the standards for approved temporary abandonment. 19.15.25.13(F) NMAC. The Act requires operators to have increased financial assurance for wells in "temporary abandonment status". NMSA 1978, §70-2-14(A). This proposal is intended to simplify the process for both operators and the agency by having the operator provide the new financial assurance at the same time they would apply for approved temporary abandonment. (Marks testimony).

16. IPANM participated in the hearing through the submittal of amendments to the proposed rule change and through cross examination of witnesses. IPANM submitted an alternative proposal which lowered the tiers for blanket financial assurance and began with a tier at \$25,000. In cross-examination, IPANM also raised several concerns with the proposed rule change including whether it is fair to include the numbers of federal wells in the calculating the tier levels for blanket financial assurance. The existing financial assurance requirements only cover wells on state and private land. 19.15.8.9(A) NMAC. Federal wells have separate financial assurance through the federal government.

17. Public comment was provided at the July hearing by Larry Marker and Rory McMinn. Mr. Marker also offered written comments, which included proposed changes to the proposal. Mr. Marker and Mr. McMinn both testified as operators of low volume wells, sometimes referred to as "stripper wells". Both testified on the costs to comply with financial assurance requirements, and that the OCD proposal would increase those costs. Both supported the IPANM proposal for blanket plugging financial assurance. Mr. Marker also proposed changes to the one well financial assurance formulas; Mr. McMinn supported Mr. Marker's changes.

18. Changes to Published Rule; Additional Exhibits. During the rulemaking proceeding, modifications to the proposed rule were offered. IPANM proposed modifications in its pre-hearing submittal. Larry Marker submitted written modifications at the hearing that were untimely under Commission rules, 19.15.3.11.B NMAC, but no

party objected and the Commission considered the proposals during deliberations. In response to requests from the Commissioners, modifications to the proposed rule changes were submitted by OCD at the hearing prior to deliberation by the Commission (OCD exh. 11, 12, 15). The Commission also requested that OCD provide revised versions of exhibits 4 and 6 to allow comparisons with the proposed rule changes (OCD exh. 9, 10) and provide exhibits that compared the impacts of OCD's and IPANM's tiers on current operators. (OCD exh. 13, 14). See 19.15.3.12(A)(2)(g) NMAC (Commission can keep record open at end of hearing for written submittals.) These changes and exhibits were presented by Allison Marks prior to final deliberation on July 20. Ms. Marks was subject to cross examination by the Commission and by the parties.

19. Deliberations and Actions. The Commission commenced final deliberations on July 20. During deliberation, the Commission reviewed the proposed rule changes, the modifications submitted by other parties, the further modifications submitted by OCD, and the evidence presented during the hearing. The Commission reviewed each section of the proposed rule and made some changes to the proposal. The Commission directed Commission counsel to prepare a clean version of the proposed rule changes based on the deliberation, and a draft Order. On August 20, 2018, the Commission reviewed the final draft of the proposed rule changes, completed deliberations and adopted Order No. R-14834.

20. Rehearing Application. Pursuant to NMSA 1978, §70-2-25(A), Larry Marker submitted an Application for Rehearing, which raised several issues for rehearing. At a meeting on September 13, the Commission noted that while Mr. Marker was not a party to the proceeding and therefore not eligible to file for rehearing under Section 70-2-25, the Commission would still consider the grounds for rehearing. The Commission voted to conduct a limited rehearing of the case which focused on the applicability of the financial assurance rule to federal wells. The Commission ordered the rehearing to occur on November 15, 2018, suspended Order No. R-14834, and ordered OCD to propose amendments to 19.15.8.9 NMAC that addressed the Commission's concerns with applying the financial assurance requirements to federal wells. Order R-14834-A.

21. Rehearing Proceeding. Notice of the rehearing was published and provided by the Commission. Pre-hearing statements were submitted by OCD, which included further amendments to 19.15.8 NMAC, and by Larry Marker, who became a party to the rehearing. IPANM remained a party. No parties submitted additional rule changes.

22. The rehearing was conducted on November 15, 2018. Appearances were made by OCD, IPANM and Larry Marker. Daniel Sanchez testified on behalf of OCD and presented the rule revisions. The new language in 19.15.8.9 NMAC is designed to clarify that the financial assurance requirements do not apply to wells that are covered by federal financial assurance. The language modifies the original proposal by excluding federal wells from the calculations used to determine the tiers for blanket financial assurance. (OCD rehearing exh. 1, 2).

23. IPANM supported the OCD proposed rule changes. Larry Marker supported the changes regarding federal financial assurance but raised concerns about other changes including the tiers for blanket bonds and the formula for single well bonds. Mr. Marker stated that these rule changes will be difficult for small operators with low production

wells. Public comment was provided by Lewis Fulton, Buddy DeLong, Hiram Hudson, Rory McMinn, Darryl Finney, Jackie Brewer and Judy Bolton. Most expressed concern about the impact of the proposed rule changes on small operators.

24. At the completion of the testimony on the rehearing, the Commission deliberated on the proposed rule changes. The Commission voted to adopt the rule changes proposed by the OCD, as revised at the July hearing and as further revised during the rehearing. The Commission directed Commission counsel to prepare a revised order and delegated the signing of the Order to the Chair.

25. Reasons for Adopting the Rule Changes. The Commission finds that the 2018 amendments to the Act require changes to the Commission's financial assurance rules. The proposed rule changes are a reasonable implementation of the statutory changes and are supported by substantial evidence. The changes are necessary to bring the rules into compliance with the statutory mandates, which require financial assurance to assure that operators meet the requirements to properly plug and abandon wells. The Commission finds that the proposed rule change, as modified, increases the requirements for financial assurance, as required by the Act, without unnecessarily burdening small operators. The proposed rule change provides a clear and detailed process for when and how to provide financial assurance, and brings greater consistency to the rules.

26. Blanket plugging financial assurance. The Commission finds that the proposal from OCD, as amended, is a reasonable implementation of the Legislative change to the Act. The Commission reviewed the impacts of the OCD and IPANM proposals, and the impacts with and without including federal wells in the totals. (OCD exh. 9, 13, 14). The Commission finds that the proposed rule changes provide for the statutory increase in blanket financial assurance without unreasonably burdening small operators. Under the OCD proposal, over 50% of the operators would not be subject to a blanket bond greater than is currently required. By not unreasonably burdening small operators who could be forced to plug low volume wells, the proposal avoids potential waste. NMSA 1978, §§ 70-2-3, 70-2-6, and 70-2-11. The Commission finds that the IPANM proposal, which would allow over 50% of the operators to be eligible for reduced blanket financial assurance and increase the amount for less than 12% of the operators, is not consistent with the intent of the legislation which authorized a 400% increase in the maximum blanket financial assurance.

27. The Commission finds that the concerns raised by IPANM and others about potential double bonding are valid. The proposed changes submitted at the rehearing clarify that wells covered by federal financial assurance are not subject to the requirements of 19.15.8 NMAC. The Commission modified the proposed rule change to not include the number of federal wells held by an operator in the determination of tier levels under 19.15.8.9(C)(2) NMAC.

28. One Well Financial Assurance. The Commission finds that the new formula for one well financial assurance more accurately reflects the actual costs of plugging wells at various depths. The evidence clearly shows that the current formulas for one well financial assurance do not accurately reflect the actual costs, and that it is not necessary to prescribe different formulas for different areas of the State. The new formula will bring the rule into compliance with the statutory mandate that the one well financial assurance must

be in "amounts determined sufficient to reasonably pay the costs of plugging the wells". NMSA 1978, §70-2-14(A). The Commission finds that the formulas offered by Mr. Marker do not reflect the actual costs nearly as well as the OCD proposal. The Commission also finds that the new definitions of "measured depth" and "true vertical depth", as amended, are reasonable and necessary to implement the one well financial assurance.

29. Temporary Abandonment. The Commission finds that the OCD proposal to limit the percentage of approved temporary abandonment wells is reasonable. Wells that are inactive for a significant period pose threats to the environment and fresh water. Operators with large percentages of inactive wells present an increased risk of improperly abandoning the wells and leaving the plugging and cleanup costs to the State. The Commission also finds that coordinating the requirements to permit temporary abandoned wells and to provide increased financial assurance is reasonable and will simplify the process for both the operators and the agency.

30. Transition provisions. The Commission finds that the proposal to have the new financial assurance requirements be effective immediately for new applications but be delayed for other wells is reasonable. The parties agreed during the hearing and the rehearing that a 3 month delay in implementation will provide operators of existing wells with time to replace their bonds. The Commission modified the dates to comply with the actual effective date of the rule change.

31. The Commission finds that the proposed rule changes, as modified by the Commission, are supported by substantial evidence in the record. The Commission reviewed the amendments to the proposed rule changes submitted by the parties. The changes approved by the Commission are within the scope of the rulemaking as provided in the notice.

THE COMMISSION CONCLUDES THAT:

1. The Commission has jurisdiction, under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -38, over the parties and subject matter of this case.

2. The Commission has legal authority, under the Oil and Gas Act, to enact the proposed rule changes.

3. The Commission provided due public notice and an opportunity for the public to provide comments regarding the proposed rule change. A public hearing was held and reasonable opportunity was provided for all persons present to provide testimony, evidence and exhibits.

4. All Commissioners were present at the public hearing and considered all the evidence presented during the hearing including the proposed modifications submitted by the parties. The Commission deliberated after the hearing and adopted the rule changes.

5. The amendments to the proposed rule changes adopted by the Commission were a logical outgrowth of the original proposal.

6. The Commission concludes that there is substantial evidence in the record to support the proposed rule changes, as amended by the Commission, that these rule changes are within the authority of the Commission under the Oil and Gas Act and that these rule changes are reasonable and further the goals of the Oil and Gas Act.

IT IS THEREFORE ORDERED THAT:

1. The proposed changes to 19.15.2, 19.15.8 and 19.15.25 NMAC, as submitted to the Commission by the OCD and as amended by the Commission during deliberation, are hereby approved by the Commission. The adoption of the rule changes will be final upon the later of (a) the action, or deemed action, of the Commission on a rehearing application filed pursuant to NMSA 1978, § 70-2-25, or (b) 20 days from the date of this order if no rehearing application is filed. The rule change shall not be filed with the state records administrator until the rule change is adopted and then must be filed with 15 days after the adoption. If no rehearing is required by the Commission, this Order shall serve as the "concise explanatory statement" required by NMSA 1978, § 14-4-5.5 (2017).

2. Commission counsel shall review the text of the final rule and make any necessary non-substantive corrections prior to filing.

DONE at Santa Fe, New Mexico, on November 29, 2018.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION


HEATHER RILEY, Chair

This is an amendment to 19.15.8 NMAC, amending Sections 1, 3, 9 and 14 effective //201_.

19.15.8.1 **ISSUING AGENCY:** ~~[Energy, Minerals and Natural Resources Department, Oil Conservation Division]~~ Oil Conservation Commission.

[19.15.8.1 NMAC - N, 12/1/2008; A, //201_]

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 NMSA 1978.

[19.15.8.3 NMAC - N, 12/1/2008; A, //201_]

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

A. **Applicability.** ~~[A person]~~ An operator 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 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 ~~[division]~~ 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. The division accepts three forms of financial assurance: a one well financial assurance that covers a single well, a blanket financial assurance that covers multiple wells, and a blanket plugging financial assurance for wells in temporarily abandoned status. The operator shall cover a well that has been in temporary abandonment for more than two years by either a one well financial assurance or a blanket plugging financial assurance for wells in temporarily abandoned status, 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. The division may release a blanket plugging financial assurance for wells in temporarily abandoned status upon the operator's or surety's written request after the wells are plugged and abandoned in accordance with 19.15.25 NMAC or are returned to production if a blanket financial assurance covers the wells or if the operator files a one well financial assurance for each well of the operator's wells in temporarily abandoned status; upon the operator's or surety's written request, the amount of the operator's blanket financial assurance for wells held in temporarily abandoned status may be reduced in accordance with the number of wells the operator elects to cover by said financial assurance.~~

~~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.~~

~~(5) If an operator elects to cover wells held, or which may be held, in temporary abandonment by a blanket plugging financial assurance for wells in temporarily abandoned status, the operator shall do so in the amounts stated below in accordance with the number of wells covered by the blanket plugging financial assurance for wells in temporarily abandoned status:~~

~~(a) A blanket financial assurance for the first five wells shall be in the amount of \$150,000.~~

~~(b) A blanket financial assurance for the six to 10 wells shall be in the amount of \$300,000.~~

~~(c) A blanket financial assurance for the 11 to 25 wells shall be in the amount of \$500,000.~~

~~(d) A blanket financial assurance for more than 25 wells shall be in the amount of \$1,000,000.]~~

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, 1/201_]

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 (effective date of rule), and for all other wells on _____, 2019 (90 days after the effective date of rule).

[19.15.8.14 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 1/201_]

This is an amendment to 19.15.25 NMAC, amending Sections 1, 12 and 13 effective //201_.

19.15.25.1 ISSUING AGENCY: ~~(Energy, Minerals and Natural Resources Department, Oil Conservation Division)~~ Oil Conservation Commission.

[19.15.25.1 NMAC - Rp, 19.15.4.1 NMAC, 12/1/2008; A, //201_]

19.15.25.12 APPROVED TEMPORARY ABANDONMENT: 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.

[19.15.25.12 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, //201_]

19.15.25.13 REQUEST FOR APPROVAL AND PERMIT FOR APPROVED TEMPORARY ABANDONMENT:

A. An operator seeking approval for approved temporary abandonment shall submit on form C-103 a notice of intent to seek approved temporary abandonment for the well 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) 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 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 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.

~~[E.]~~ E. The division shall specify the permit's expiration date, which shall be not more than five years from the date of approval.

[19.15.25.13 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, //201_]

This is an amendment to 19.15.2 NMAC, amending Section 7 effective //201_.

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" means automatic custody transfer.
- (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”** 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) **“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.

(6) **“Berm”** means an embankment or ridge constructed to prevent the movement of liquids, sludge, solids or other materials.

(7) **“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) **“BLM”** means the United States department of the interior, bureau of land management.

(9) **“Bottom hole pressure”** means the gauge pressure in psi under conditions existing at or near the producing horizon.

(10) **“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) **“BS&W”** means basic sediments and water.

(12) "BTEX" means benzene, toluene, ethylbenzene and xylene.

C. Definitions beginning with the letter "C".

(1) "Carbon dioxide gas" means noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

(2) "Casinghead gas" means a gas or vapor or both gas and vapor indigenous to and produced from a pool the division classifies as an oil pool. This also includes gas-cap gas produced from such an oil pool.

(3) "Cm/sec" means centimeters per second.

(4) "CPD" means central point delivery.

(5) "Combination multiple completion" means a multiple completion in which two or more common sources of supply are produced through a combination of two or more conventional diameter casing strings cemented in a common well bore, or a combination of small diameter and conventional diameter casing strings cemented in a common well bore, the conventional diameter strings of which might or might not be a conventional multiple completion.

(6) "Commission" means the oil conservation commission.

(7) "Commission clerk" means the division employee the director designates to provide staff support to the commission and accept filings in rulemaking or adjudicatory cases before the commission.

(8) "Common purchaser for gas" means a person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells within each common source of supply from which it purchases.

(9) "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil to be transported through pipelines.

(10) "Common source of supply". See pool.

(11) "Condensate" means the liquid recovered at the surface that results from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

(12) "Contiguous" means acreage joined by more than one common point, that is, the common boundary is at least one side of a governmental quarter-quarter section.

(13) "Conventional completion" means a well completion in which the production string of casing has an outside diameter exceeding 2.875 inches.

(14) "Conventional multiple completion" means a completion in which two or more common sources of supply are produced through one or more strings of tubing installed within a single casing string, with the production from each common source of supply completely segregated by means of packers.

(15) "Correlative rights" means the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas in the pool, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner's just and equitable share of the reservoir energy.

(16) "Cubic feet of gas or cubic foot of gas" means that volume of gas contained in one cubic foot of space and computed at a base pressure of 10 ounces per square inch above the average barometric pressure of 14.4 psi (15.025 psi absolute), at a standard base temperature of 60 degrees fahrenheit.

D. Definitions beginning with the letter "D".

(1) "Deep pool" means a common source of supply that is situated 5000 feet or more below the surface.

(2) "Depth bracket allowable" means the basic oil allowable the division assigns a pool and based on its depth, unit size or special pool orders, which, when multiplied by the market demand percentage factor in effect, determines the pool's top proration unit allowable.

(3) "Director" means the director of the New Mexico energy, minerals and natural resources department, oil conservation division.

(4) "Division" means the New Mexico energy, minerals and natural resources department, oil conservation division.

(5) "Division clerk" means the division employee the director designates to accept filings in adjudicatory cases before the division.

(6) "Downstream facility" means a facility associated with the transportation (including gathering) or processing of gas or oil (including a refinery, gas plant, compressor station or crude oil pump station); brine production; or the oil field service industry.

(7) "DRO" means diesel range organics.

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.

F. Definitions beginning with the letter "F".

- (1) "Facility" means a structure, installation, operation, storage tank, transmission line, access road, motor vehicle, rolling stock or activity of any kind, whether stationary or mobile.
- (2) "Field" means the general area that at least one pool underlies or appears to underlie; and also includes the underground reservoir or reservoirs containing oil or gas. The words field and pool mean the same thing when only one underground reservoir is involved; however, field unlike pool may relate to two or more pools.
- (3) "Fresh water" to be protected includes the water in lakes and playas (regardless of quality, unless the water exceeds 10,000 mg/l TDS and it can be shown that degradation of the particular water body will not adversely affect hydrologically connected fresh ground water), the surface waters of streams regardless of the water quality within a given reach, and underground waters containing 10,000 mg/l or less of TDS except for which, after notice and hearing, it is found there is no present or reasonably foreseeable beneficial use that contamination of such waters would impair.

G. Definitions beginning with the letter "G".

- (1) "Gas", also known as natural gas, means a combustible vapor composed chiefly of hydrocarbons occurring naturally in a pool the division has classified as a gas pool.
- (2) "Gas lift" means a method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.
- (3) "Gas-oil ratio" means the ratio of the casinghead gas produced in standard cubic feet to the number of barrels of oil concurrently produced during any stated period.
- (4) "Gas-oil ratio adjustment" means the reduction in allowable of a high gas oil ratio unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.
- (5) "Gas transportation facility" means a pipeline in operation serving gas wells for the transportation of gas, or some other device or equipment in like operation where the gas produced from gas wells connected with the pipeline or other device or equipment can be transported or used for consumption.
- (6) "Gas well" means a well producing gas from a gas pool, or a well with a gas-oil ratio exceeding 100,000 cubic feet of gas per barrel of oil producing from an oil pool.
- (7) "Geomembrane" means an impermeable polymeric sheet material that is impervious to liquid and gas if it maintains its integrity and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system.
- (8) "Geotextile" means a sheet material that is less impervious to liquid than a geomembrane but more resistant to penetration damage, and is used as part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for drainage, to serve as a cushion to protect geomembranes or to provide structural support.
- (9) "GRO" means gasoline range organics.
- (10) "Ground water" means interstitial water that occurs in saturated earth material and can enter a well in sufficient amounts to be used as a water supply.
- (11) "Ground water sensitive area" means an area the division specifically designates after evaluation of technical evidence where ground water exists that would likely exceed WQCC standards if contaminants were introduced into the environment.

H. Definitions beginning with the letter "H".

- (1) "Hardship gas well" means a gas well where underground waste occurs if the well is shut-in or curtailed below its minimum sustainable flow rate.
- (2) "Hazard to public health" exists when water that is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of the use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if a toxic pollutant as defined at Subsection WW of 20.6.2.7 NMAC affecting human health is present in the water. In determining whether a release would cause a hazard to public health to exist, the director investigates and considers the purification and dilution reasonably expected to occur from the time and place of release to the time and place of withdrawal for use as human drinking water.
- (3) "Hazardous waste" means non-exempt waste that exceeds the minimum standards for waste hazardous by characteristics established in RCRA regulations, 40 CFR 261.21-261.24, or listed hazardous waste as defined in 40 CFR, part 261, subpart D, as amended.
- (4) "HDPE" means high-density polyethylene.
- (5) "High gas-oil ratio proration unit" means a unit with at least one producing oil well with a gas-oil ratio exceeding the limiting gas-oil ratio for the pool in which the unit is located.
- (6) "H₂S" means hydrogen sulfide.

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 is not being used for beneficial purposes such as 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.

J. Definitions beginning with the letter "J". [RESERVED]

K. Definitions beginning with the letter "K". "Knowingly and willfully", for assessing civil penalties, means the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The conduct's knowing and willful nature may be established by plain indifference to or reckless disregard of the requirements of statutes, rules, orders or permits. A consistent pattern or performance or failure to perform also may be sufficient to establish the conduct's knowing and willful nature, where such consistent pattern is neither the result of honest mistakes nor mere inadvertency. Conduct that is otherwise regarded as being knowing and willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

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.

M. Definitions beginning with the letter "M".

(1) **"Marginal unit"** means a proration unit that is incapable of producing top proration unit allowable for the pool in which it is located.

(2) **"Market demand percentage factor"** means that percentage factor of one hundred percent or less as the division determines at an oil allowable hearing, which, when multiplied by the depth bracket allowable applicable to each pool, determines that pool's top proration unit allowable.

(3) **"MCF"** means 1000 cubic feet.

(4) **"MCFD"** means 1000 cubic feet per day.

(5) **"MCFGPD"** means 1000 cubic feet of gas per day.

(6) **"Measured depth"** means the total length of the well bore.

~~(6)~~ (7) **"Mg/l"** means milligrams per liter.

~~(7)~~ (8) **"Mg/kg"** means milligrams per kilogram.

~~(8)~~ (9) **"Mineral estate"** is the most complete ownership of oil and gas recognized in law and includes the mineral interests and the royalty interests.

~~(9)~~ (10) **"Mineral interest owner"** means a working interest owner, or an owner of a right to explore for and develop oil and gas that is not subject to an existing oil and gas lease.

~~(10)~~ (11) **"Minimum allowable"** means the minimum amount of production from an oil or gas well that may be advisable from time to time to the end that production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

~~(11)~~ (12) **"Miscellaneous hydrocarbons"** means tank bottoms occurring at pipeline stations; oil storage terminals or refineries; pipeline break oil; catchings collected in traps, drips or scrubbers by gasoline plant operators in the plants or in the gathering lines serving the plants; the catchings collected in private, community or commercial salt water disposal systems; or other liquid hydrocarbon that is not lease crude or condensate.

N. Definitions beginning with the letter "N".

(1) **"Non-aqueous phase liquid"** means an interstitial body of liquid oil, petroleum product, petrochemical or organic solvent, including an emulsion containing such material.

(2) **"Non-exempt waste"** means oil field waste not exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(3) **“Non-hazardous waste”** means non-exempt oil field waste that is not hazardous waste.

(4) **“Non-marginal unit”** means a proration unit that can produce the top proration unit allowable for the pool in which it is located, and to which the division assigns a top proration unit allowable.

(5) **“NORM”** means the naturally occurring radioactive materials regulated by 20.3.14 NMAC.

O. Definitions beginning with the letter “O”.

(1) **“Official gas-oil ratio test”** means the periodic gas-oil ratio test the operator performs pursuant to division order by the method and in the manner the division prescribes.

(2) **“Oil”** means petroleum hydrocarbon produced from a well in the liquid phase and that existed in a liquid phase in the reservoir. This definition includes crude oil or crude petroleum oil.

(3) **“Oil field waste”** means non-domestic waste resulting from the exploration, development, production or storage of oil or gas pursuant to Paragraph (21) of Subsection B of Section 70-2-12 NMSA 1978 and the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil pursuant to Paragraph (22) of Subsection B of Section 70-2-12 NMSA 1978, including waste generated from oil field remediation or abatement activity regardless of the date of release. Oil field waste does not include waste not generally associated with oil and gas industry operations such as tires, appliances or ordinary garbage or refuse unless generated at a division-regulated facility, and does not include sewage, regardless of the source.

(4) **“Oil well”** means a well capable of producing oil and that is not a gas well as defined in Paragraph (6) of Subsection G of 19.15.2.7 NMAC.

(5) **“Operator”** means a person who, duly authorized, manages a lease’s development or a producing property’s operation, or who manages a facility’s operation.

(6) **“Overproduction”** means the amount of oil or gas produced during a proration period exceeding the amount authorized on the proration schedule.

(7) **“Owner”** means the person who has the right to drill into and to produce from a pool, and to appropriate the production either for the person or for the person and another.

P. Definitions beginning with the letter “P”.

(1) **“Penalized unit”** means a proration unit to which, because of an excessive gas-oil ratio, the division assigns an allowable that is less than top proration unit allowable for the pool in which it is located and also less than the ability of the well or wells on the unit to produce.

(2) **“Person”** means an individual or entity including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or an agency, department or instrumentality of the United States and of its officers, agents or employees.

(3) **“Pit”** means a surface or sub-surface impoundment, man-made or natural depression or diked area on the surface. Excluded from this definition are berms constructed around tanks or other facilities solely for safety, secondary containment and storm water or run-on control.

(4) **“Playa lake”** means a level or nearly level area that occupies the lowest part of a completely closed basin and that is covered with water at irregular intervals, forming a temporary lake.

(5) "Pool" means an underground reservoir containing a common accumulation of oil or gas. Each zone of a general structure, which zone is completely separated from other zones in the structure, is covered by the word pool as used in 19.15.2 NMAC through 19.15.39 NMAC. "Pool" is synonymous with "common source of supply" and with "common reservoir".

(6) "Potential" means a well's properly determined capacity to produce oil or gas under division-prescribed conditions.

(7) "Ppm" means parts per million by volume.

(8) "PQL" means practical quantitation limit.

(9) "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to maintain the reservoir's existing pressure or to retard the reservoir pressure's natural decline.

(10) "Produced water" means water that is an incidental byproduct from drilling for or the production of oil and gas.

(11) "Producer" means the owner of a well or wells capable of producing oil or gas or both in paying quantities.

(12) "Product" means a commodity or thing made or manufactured from oil or gas, and derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzene, wash oil, lubricating oil and blends or mixtures of oil or gas or a derivative thereof.

(13) "Proration day" consists of 24 consecutive hours that begin at 7:00 a.m. and end at 7:00 a.m. on the following day.

(14) "Proration month" means the calendar month that begins at 7:00 a.m. on the first day of the month and ends at 7:00 a.m. on the first day of the next succeeding month.

(15) "Proration period" means for oil the proration month and for gas the 12-month period that begins at 7:00 a.m. on January 1 of each year and ends at 7:00 a.m. on January 1 of the succeeding year or other period designated by general or special order of the division.

(16) "Proration schedule" means the division orders authorizing the production, purchase and transportation of oil, casinghead gas and gas from the various units of oil or of gas in allocated pools.

(17) "Proration unit" means the area in a pool that can be effectively and efficiently drained by one well as determined by the division or commission (see Subsection B of Section 70-2-17 NMSA 1978) as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool.

(18) "Prospective spacing unit" means a hypothetical spacing unit that does not yet have a producing well.

(19) "PVC" means poly vinyl chloride.

(20) "Psi" means pounds per square inch.

Q. Definitions beginning with the letter "Q". [RESERVED]

R. Definitions beginning with the letter "R".

- (1) "RCRA" means the federal Resource Recovery and Conservation Act.
- (2) "Recomplete" means the subsequent completion of a well in a different pool from the pool in which it was originally completed.
- (3) "Regulated NORM" means NORM contained in oil-field soils, equipment, sludges or other materials related to oil-field operations or processes exceeding the radiation levels specified in 20.3.14.1403 NMAC.
- (4) "Release" means breaks, leaks, spills, releases, fires or blowouts involving oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and gases to the environment.
- (5) "Remediation plan" means a written description of a program to address unauthorized releases. The plan may include appropriate information, including assessment data, health risk demonstrations and corrective action or actions. The plan may also include an alternative proposing no action beyond the spill report's submittal. -
- (6) "Responsible person" means the owner or operator who shall complete a division-approved corrective action for pollution from releases.
- (7) "Royalty interest owner" means the owner of an interest in oil and gas that does not presently entitle the owner to explore, drill or otherwise develop those minerals, including lessors, royalty interest owners and overriding royalty interest owners. Royalty interests are non-cost bearing.
- (8) "Run-on" means rainwater, leachate or other liquid that drains from other land onto any part of a division-approved facility.

S. Definitions beginning with the letter "S".

- (1) "SAR" means the sodium adsorption ratio.
- (2) "Secondary recovery" means a method of recovering quantities of oil or gas from a reservoir which quantities would not be recoverable by ordinary primary depletion methods.
- (3) "Sediment oil" means tank bottoms and other accumulations of liquid hydrocarbons on an oil and gas lease, which hydrocarbons are not merchantable through normal channels.
- (4) "Shallow pool" means a pool that has a depth range from zero to 5000 feet.
- (5) "Shut-in" means the status of a production well or an injection well that is temporarily closed, whether by closing a valve or disconnection or other physical means.
- (6) "Shut-in pressure" means the gauge pressure noted at the wellhead when the well is completely shut-in, not to be confused with bottom hole pressure.
- (7) "Significant modification of an abatement plan" means a change in the abatement technology used excluding design and operational parameters, or relocation of twenty-five percent or more of the compliance sampling stations, for a single medium, as designated pursuant to Subparagraph (d) of Paragraph (2) of Subsection D of 19.15.30.13 NMAC.
- (8) "Soil" means earth, sediments or other unconsolidated accumulations of solid particles produced by the physical and chemical disintegration of rocks, and that may or may not contain organic matter.
- (9) "Spacing unit" means the area allocated to a well under a well spacing order or rule. Under the Oil and Gas Act, Paragraph (10) of Subsection B of Section 70-2-12 NMSA 1978, the

commission may fix spacing units without first creating proration units. See *Rutter & Wilbanks corp. v. oil conservation comm'n*, 87 NM 286 (1975). This is the area designated on form C-102.

(10) “Subsurface water” means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or that vegetation may use.

(11) “Surface waste management facility” means a facility that receives oil field waste for collection, disposal, evaporation, remediation, reclamation, treatment or storage except:

(a) a facility that utilizes underground injection wells subject to division regulation pursuant to the federal Safe Drinking Water Act, and does not manage oil field wastes on the ground in pits, ponds, below-grade tanks or land application units;

(b) a facility permitted pursuant to the New Mexico environmental improvement board rules or WQCC rules;

(c) a temporary pit as defined in 19.15.17 NMAC;

(d) a below-grade tank or pit that receives oil field waste from a single well, permitted pursuant to 19.15.37 NMAC, regardless of the capacity or volume of oil field waste received;

(e) a facility located at an oil and gas production facility and used for temporary storage of oil field waste generated on-site from normal operations, if the facility does not pose a threat to fresh water, public health, safety or the environment;

(f) a remediation conducted in accordance with a division-approved abatement plan pursuant to 19.15.30 NMAC, a corrective action pursuant to 19.15.29 NMAC or a corrective action of a non-reportable release;

(g) a facility operating pursuant to a division emergency order;

(h) a site or facility where the operator is conducting emergency response operations to abate an immediate threat to fresh water, public health, safety or the environment or as the division has specifically directed or approved; or

(i) a facility that receives only exempt oil field waste, receives less than 50 barrels of liquid waste per day (averaged over a 30-day period), has a capacity to hold 500 barrels of liquids or less and is permitted pursuant to 19.15.17 NMAC.

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) “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) “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) "TPH" means total petroleum hydrocarbons.

(7) "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) "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) "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) "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) "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)~~ (12) "Tubingless completion" means a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

~~(13)~~ (13) "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.

U. Definitions beginning with the letter "U".

(1) "Underground source of drinking water" means an aquifer that supplies water for human consumption or that contains ground water having a TDS concentration of 10,000 mg/l or less and that is not an exempted aquifer.

(2) "Underproduction" means the amount of oil or the amount of gas during a proration period by which a given proration unit failed to produce an amount equal to that the division authorizes in the proration schedule.

(3) "Unit of proration for gas" consists of such multiples of 40 acres as may be prescribed by division-issued special pool orders.

(4) "Unit of proration for oil" consists of one 40-acre tract or such multiples of 40-acre tracts as may be prescribed by division-issued special pool orders.

(5) "Unorthodox well location" means a location that does not conform to the spacing requirements division rules establish.

(6) "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all a division-approved facility's structural components. Examples of unstable areas are areas of poor foundation conditions, areas susceptible to mass earth movements and karst terrain areas where karst topography is developed because of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features of karst terrain include sinkholes, sinking streams, caves, large springs and blind valleys.

(7) "Upstream facility" means a facility or operation associated with the exploration, development, production or storage of oil or gas that is not a downstream facility.

V. Definitions beginning with the letter "V". "Vadose zone" means unsaturated earth material below the land surface and above ground water, or in between bodies of ground water.

W. Definitions beginning with the letter "W".

(1) "Waste", in addition to its ordinary meaning, includes:

(a) underground waste as those words are generally understood in the oil and gas business, and to embrace the inefficient, excessive or improper use or dissipation of the reservoir energy, including gas energy and water drive, of a pool, and the locating, spacing, drilling, equipping, operating or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recovered from a pool, and the use of inefficient underground storage of gas;

(b) surface waste as those words are generally understood in the oil and gas business, and to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas of any type or in any form, or oil, or a product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of oil or gas, in excess of the reasonable market demand;

(c) oil production in this state in excess of the reasonable market demand for the oil, the excess production causes or results in waste that the Oil and Gas Act prohibits; reasonable market demand as used herein with respect to oil means the demand for the oil, for reasonable current requirements for current consumption and use within or outside of the state, together with the demand of amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of oil or the products thereof, or both the oil and products;

(d) the non-ratable purchase or taking of oil in this state; the non-ratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b) and (c) of Paragraph (1) of Subsection W of 19.15.2.7 NMAC and causes waste by violating the Oil and Gas Act, Section 70-2-16 NMSA 1978;

(e) the production in this state of gas from a gas well or wells, or from a gas pool, in excess of the reasonable market demand from such source for gas of the type produced or in excess of the capacity of gas transportation facilities for such type of gas; the words "reasonable market demand", as used herein with respect to gas, shall be construed to mean the demand for gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of gas or products thereof, or both the gas and products.

(2) "Water" means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

(3) "Water contaminant" means a substance that could alter if released or spilled water's physical, chemical, biological or radiological qualities. Water contaminant does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(4) "Watercourse" means a river, creek, arroyo, canyon, draw or wash or other channel having definite banks and bed with visible evidence of the occasional flow of water.

(5) **“Water pollution”** means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or property use.

(6) **“Well blowout”** means a loss of control over and subsequent eruption of a drilling or workover well or the rupture of the casing, casinghead or wellhead of an oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquid, from the well.

(7) **“Well bore”** means the interior surface of a cased or open hole through which drilling, production or injection operations are conducted.

(8) **“Wellhead protection area”** means the area within 200 horizontal feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas does not include areas around water wells drilled after an existing oil or gas waste storage, treatment or disposal site was established.

(9) **“Wetlands”** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. This definition does not include constructed wetlands used for wastewater treatment purposes.

(10) **“Working interest owner”** means the owner of an operating interest under an oil and gas lease who has the exclusive right to exploit the oil and gas minerals. Working interests are cost bearing.

(11) **“WQCC”** means the New Mexico water quality control commission.

[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, //201_]