

STATE OF NEW MEXICO  
NEW MEXICO OIL CONSERVATION COMMISSION

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

CASE NO. \_\_\_\_\_

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APPLICATION OF  
WESTERN ENVIRONMENTAL LAW CENTER, CITIZENS CARING FOR THE  
FUTURE, CONSERVATION VOTERS NEW MEXICO EDUCATION FUND, DINÉ  
C.A.R.E., EARTHWORKS, NAEVA, NEW MEXICO INTERFAITH POWER AND  
LIGHT, SAN JUAN CITIZENS ALLIANCE, AND SIERRA CLUB  
FOR RULEMAKING

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Pursuant to NMSA 1978, §§ 70-2-6, 70-2-12(B)(1), and 70-2-14(A) and 19.15.3.8.A NMAC, Applicants Western Environmental Law Center, Citizens Caring for the Future, Conservation Voters New Mexico Education Fund, Diné C.A.R.E., Earthworks, Naeva, New Mexico Interfaith Power and Light, San Juan Citizens Alliance, and Sierra Club (collectively “Applicants”) apply to the New Mexico Oil Conservation Commission (“Commission”) to amend 19.15.2 NMAC–*General Provisions for Oil and Gas Operations*, 19.15.5 NMAC–*Enforcement and Compliance*, 19.15.8 NMAC–*Financial Assurance*, 19.15.9 NMAC–*Well Operator Provisions*, and 19.15.25 NMAC–*Plugging and Abandonment of Wells*.

In accordance with 19.15.3.8.A NMAC, Applicants provide the following information:

**1. Brief Summary of Proposed Amendments’ Intended Effect:**

Commission rules currently allow oil and gas operators to discount financial assurance costs and to indefinitely defer well plugging and remediation—and to pass the associated costs and risks to the State of New Mexico and its taxpayers and communities. The purpose of the proposed amendments is to address these regulatory inadequacies and thereby significantly reduce the concomitant financial, environmental, and health risks and harms to the state, its

people, and the environment.

In summary, the proposed amendments include:

*19.15.5 NMAC-Enforcement and Compliance:* Applicants propose to amend 19.15.5.9 NMAC to add a requirement that oil and gas operators must meet the waste prevention requirements of 19.15.27 and -28 NMAC in order to be in compliance with 19.15.5.9.A NMAC.

*19.15.8 NMAC-Financial Assurance:* Applicants propose to amend the existing financial assurance requirements to better reflect actual well plugging and abandonment costs and better secure the state against associated risks, and to include adjustment for inflation every three years, subject to any limitations in NMSA 1978, § 70-2-14. Applicants propose to increase financial assurance amounts for active wells, inactive wells, wells in approved temporary abandonment status, and wells in expired temporary abandoned status and to establish new categories of financial assurance for higher risk wells and operators, including “stripper well properties” upon transfer of operator and operators with a large number of inactive wells and low production averages.

According to the Oil Conservation Division (“OCD”), on average, it costs the state approximately \$150,000 to permanently plug and abandon a well, yet 19.15.8.9 NMAC allows blanket bonds amounting to as little as \$2,500 per well for active wells, and as little as \$40,000 per well for inactive wells. A [2021 report](#) commissioned by the New Mexico State Land Office identified a gap of over \$8 billion between the total funds available through financial assurance held by the state and the estimated total costs of well plugging and infrastructure cleanup. The 2021 report estimated plugging and abandonment costs of \$77,000 to \$120,400 per well. At an updated average plugging cost of \$150,000 per well, this gap increases significantly.

*19.15.9 NMAC-Well Operator Provisions:* Applicants propose to amend 19.15.9.9

NMAC to add new operator certification and disclosure requirements to applications for change of operator and to add new criteria under which the OCD Director or designee may deny change of operator applications based on compliance history or risk that the transferred wells could be orphaned.

*19.15.25 NMAC-Plugging and Abandonment of Wells:* Applicants propose to amend the existing well plugging and abandonment requirements to require operators to demonstrate that a well will be returned to beneficial use within a reasonable time period in order to be granted approved temporary abandonment status, to require a hearing before the Commission for an operator applying to extend approved temporary abandonment status beyond five years, and to limit the number of years an operator can maintain a well in approved temporary abandonment status. Applicants propose an implementation schedule for applying the proposed rule changes to existing wells.

Currently, 19.15.25.8.B NMAC, last amended by the Commission in 2008, allows a well to be placed in “approved temporary abandonment” status under three circumstances: after a 60-day suspension of drilling, if a well no longer is being used for a “beneficial purpose,” and after a well is “inactive” for one year. If a well is placed in “approved temporary abandonment” status, an operator can avoid plugging and abandoning the well and remediating the surrounding site *indefinitely*. 19.15.25.12 NMAC. Operators are not required to demonstrate that the well will be returned to beneficial use within a reasonable period in order to be granted initial or renewed temporary abandonment status. *See* 19.15.9.12, -13 NMAC. As a result, over half of the approximately 450 wells in approved temporary abandonment status have not produced oil or gas in over five years, and some have not produced in decades.<sup>1</sup>

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<sup>1</sup> *See* <https://wwwapps.emnrd.nm.gov/ocd/ocdpermitting/Reporting/Compliance/InactiveWells.aspx>.

*19.15.2 NMAC-General Provisions for Oil and Gas Operations:* Applicants propose to amend and consolidate the definitions of “approved temporary abandonment” and “temporary abandonment,” amend the definition of “inactive well,” and add definitions of “asset retirement obligations,” “beneficial use,” and “expired temporary abandonment” to reflect the proposed amendments to 19.15.8, 19.15.9, and 19.15.25 NMAC.

**2. Draft of proposed amendments:** A draft of the proposed amendments is attached as:

Applicants’ Exhibit 1-A:	19.15.2 NMAC proposed amendments
Applicants’ Exhibit 1-B:	19.15.5 NMAC proposed amendments
Applicants’ Exhibit 1-C:	19.15.8 NMAC proposed amendments
Applicants’ Exhibit 1-D:	19.15.9 NMAC proposed amendments
Applicants’ Exhibit 1-E:	19.15.25 NMAC proposed amendments

**3. Proposed legal notice:** A proposed legal notice for publication for the rulemaking hearing that meets the requirements of 19.15.3.9.B NMAC is attached as Applicants’ Exhibit 2.

Based on the foregoing, Applicants respectfully request that the Commission:

1. Schedule a hearing, to be held in-person and virtually, on the proposed amendments in this Application commencing October 21, 2024 and continuing thereafter as necessary;
2. Issue an order appointing a hearing officer to conduct the hearing in this matter;
3. Require persons to file Pre-hearing Statements in accordance with 19.15.3.11.B NMAC, except that any person filing a Pre-hearing Statement shall file full written testimony for each technical witness, instead of “a concise statement” of each witness’s testimony; and
4. Require persons to file Pre-hearing Statements with full direct testimony and exhibits by August 26, 2024 and with full rebuttal testimony and exhibits by September 23, 2024.

Respectfully submitted,

*/s/ Allyson Beasley*

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Power and Light, San Juan Citizens  
Alliance, and Sierra Club

Certificate of Service

I certify that a copy of the foregoing pleading was emailed to the following on June 24,  
2024:

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New Mexico Energy, Minerals, and  
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/s/ Allyson Beasley  
Allyson Beasley

# EXHIBIT 1-A

## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.2 NMAC

**TITLE 19 NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 15 OIL AND GAS**  
**PART 2 GENERAL PROVISIONS FOR OIL AND GAS OPERATIONS**

**19.15.2.1 ISSUING AGENCY:** Oil Conservation Commission.  
[19.15.2.1 NMAC - Rp, 19.15.1.1 NMAC, 12/1/2008; A, 6/26/2018]

**19.15.2.2 SCOPE:** 19.15.2 NMAC applies to persons or entities engaged in oil and gas development and production within New Mexico and to 19.15.2 NMAC through 19.15.39 NMAC.  
[19.15.2.2 NMAC - Rp, 19.15.1.2 NMAC, 12/1/2008]

**19.15.2.3 STATUTORY AUTHORITY:** 19.15.2 NMAC is adopted pursuant to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, which grants the oil conservation division jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash because of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations.  
[19.15.2.3 NMAC - Rp, 19.15.1.3 NMAC, 12/1/2008; A, 6/26/2018]

**19.15.2.4 DURATION:** Permanent.  
[19.15.2.4 NMAC - Rp, 19.15.1.4 NMAC, 12/1/2008]

**19.15.2.5 EFFECTIVE DATE:** December 1, 2008, unless a later date is cited at the end of a section.  
[19.15.2.5 NMAC - Rp, 19.15.1.5 NMAC, 12/1/2008]

**19.15.2.6 OBJECTIVE:** To set forth general provisions and definitions pertaining to the authority of the oil conservation division and the oil conservation commission pursuant to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978.  
[19.15.2.6 NMAC - Rp, 19.15.1.6 NMAC, 12/1/2008; A, 6/26/2018]

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

- A. Definitions beginning with the letter "A".**
- (1) "Abate" means to investigate, contain, remove or mitigate water pollution.
  - (2) "Abatement" means the investigation, containment, removal or other mitigation of water pollution.
  - (3) "Abatement plan" means a description of operational, monitoring, contingency and closure requirements and conditions for water pollution's prevention, investigation and abatement.
  - (4) "Act" or "Oil and Gas Act" means Chapter 70, Article 2 NMSA 1978, as it may be modified or amended.
  - (5) "Adjoining spacing units" mean those existing or prospective spacing units in the same pool that are touching at a point or line on the subject spacing unit.
  - (6) "Adjusted allowable" means the allowable production a well or proration unit receives after all adjustments are made.
  - (7) "AFE" means authorization for expenditure.
  - (8) "Affected persons" means the following persons owning interests in a spacing unit or other identified tract:
    - (a) the operator, as shown in division records, of a well on the tract, or, if the tract is included in a division-approved or federal unit, the designated unit operator;
    - (b) in the absence of an operator, or with respect to an application wherein the operator of the spacing unit or identified tract is the applicant, each working interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant files the application;
    - (c) as to any tract or interest therein that is not subject to an existing oil and gas lease, each mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application; and
    - (d) if the United States or state of New Mexico owns the mineral estate in the spacing unit or identified tract or any part thereof, the BLM or state land office, as applicable; or



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(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”, “temporary abandonment”, or “temporary abandonment status”** 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) “Asset retirement obligation” means an obligation associated with the retirement of a tangible long-lived asset.**

~~(15)~~(16) **“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) “Beneficial purposes” or “beneficial use” means productive use of an oil or gas well, and includes but is not limited to use of a well for primary production of oil or gas, secondary or tertiary production of oil, injection for secondary and tertiary production of oil, injection for reservoir pressure maintenance, monitoring, and disposal of wastewater. “Beneficial purposes” and “beneficial use” does not include use of an oil or gas well for speculative purposes.**

~~(6)~~(7) **“Berm”** means an embankment or ridge constructed to prevent the movement of liquids, sludge, solids or other materials.

~~(7)~~(8) **“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)~~(9) **“BLM”** means the United States department of the interior, bureau of land management.

~~(9)~~(10) **“Bottom hole pressure”** means the gauge pressure in psi under conditions existing at or near the producing horizon.

~~(10)~~(11) **“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)~~(12) **“BS&W”** means basic sediments and water.

~~(12)~~(13) **“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

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produced from a pool the division classifies as an oil pool. This also includes gas-cap gas produced from such an oil pool.

(3) **“Certified mail” or “certified mail, return receipt requested”** means United States Postal Service Certified Mail or equivalent service that provides tracking and signature receipt, including Federal Express, United Parcel Service, or similar courier services.

(4) **“Cm/sec”** means centimeters per second.

(5) **“CPD”** means central point delivery.

(6) **“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.

(7) **“Commission”** means the oil conservation commission.

(8) **“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.

(9) **“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.

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

(11) **“Common source of supply”**. See pool.

(12) **“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.

(13) **“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.

(14) **“Conventional completion”** means a well completion in which the production string of casing has an outside diameter exceeding 2.875 inches.

(15) **“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.

(16) **“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 practically 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.

(17) **“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

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displacement of oil from an oil well or division-designated pool other than a primary recovery process, including but not limited to the use of a pressure maintenance process; a water flooding process; an immiscible, miscible, chemical, thermal or biological process; or any other related process.

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

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

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

(a) it is hydrocarbon producing;

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

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

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

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

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

### 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

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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) **"H<sub>2</sub>S"** 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.

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### 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.

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

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

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

(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.

(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.

(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.



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(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 a fluid 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

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submittal.

(6) **“Responsible person”** means the owner or operator who shall complete a division-approved corrective action for pollution from releases.

(7) **“Rules”** means the rules enacted pursuant to the Oil and Gas Act, 19.15.2 to 19.15.39 NMAC, as they may be modified or amended.

(8) **“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.

(9) **“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 water 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

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that settles naturally below oil in tanks and receptacles that are used in oil's handling and storing, and which accumulation contains more than two percent of BS&W; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet to the tank.

(2) "TDS" means total dissolved solids.

~~(3) "Temporary abandonment" or "temporarily abandoned status" means the status of a well that is inactive.~~

~~(4)(3)~~ "Top proration unit allowable for gas" means the maximum number of cubic feet of gas, for the proration period, the division allocates to a gas producing unit in an allocated gas pool.

~~(5)(4)~~ "Top proration unit allowable for oil" means the maximum number of barrels for oil daily for each calendar month the division allocates on a proration unit basis in a pool to non-marginal units. The division shall determine the top proration unit allowable for a pool by multiplying the applicable depth bracket allowable by the market demand percentage factor in effect.

~~(6)(5)~~ "TPH" means total petroleum hydrocarbons.

~~(7)(6)~~ "Treating plant" means a plant constructed for wholly or partially or being used wholly or partially for reclaiming, treating, processing or in any manner making tank bottoms or other waste oil marketable.

~~(8)(7)~~ "Tribal lands" means those lands for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe. This includes reservations, pueblo land grants, tribal trust lands and individual trust allotments.

~~(9)(8)~~ "Tribal leases" means those leases of minerals or interests in or rights to minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

~~(10)(9)~~ "Tribal minerals" means those minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

~~(11)(10)~~ "True vertical depth" means the difference in elevation between the ground level at the surface location of the well and the deepest point in the well bore.

~~(12)(11)~~ "Tubingless completion" means a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

~~(13)(12)~~ "Tubingless multiple completion" means completion in which two or more common sources of supply are produced through an equal number of casing strings cemented in a common well bore, each such string of casing having an outside diameter of 2.875 inches or less, with the production from each common source of supply completely segregated by cement.

### 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



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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 costbearing.

(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, 1/15/2019; A, 10/13/2020; A, 8/23/2022]

### 19.15.2.8 GENERAL OPERATIONS/WASTE PROHIBITED:

A. The production or handling of oil or gas of any type or in any form or the handling of oil or gas

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products in a manner, under conditions or in an amount as to constitute or result in waste is prohibited.

**B.** Operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, treating plant operators or other persons shall conduct their operations in or related to the drilling, equipping, operating, producing, plugging and abandonment of oil, gas, injection, disposal and storage wells or other facilities in a manner that prevents waste of oil and gas, the contamination of fresh waters and shall not wastefully utilize oil or gas or allow either to leak or escape from a natural reservoir or from wells, tanks, containers, pipe or other storage, conduit or operating equipment.

[19.15.2.8 NMAC - Rp, 19.15.1.13 NMAC, 12/1/2008]

**19.15.2.9 ORDERS:** The division or commission may issue orders, including division or commission special pool orders when required and the orders shall prevail against rules if in conflict with them.

[19.15.2.9 NMAC - Rp, 19.15.1.11 NMAC, 12/1/2008]

**19.15.2.10 ONLINE APPLICATION AND SUBMITTALS:**

**A.** The division shall establish online application and submittal procedures on the division's website for the electronic filing of all forms, applications and other written documents and information with the division.

**B.** All applications that require the payment of a fee, as provided in Section 70-2-39 NMSA 1978, shall include the fee payment with the application.

**C.** A person whose filing is made untimely due to a technical failure of the division's web-based online application process may request an extension of time. Technical failures not originating with the division's process, such as problems with the filer's equipment, software, or telecommunications facility will not constitute a basis for relief.

[19.15.2.10 NMAC - N, 8/23/2022]

**19.15.2.11 EMERGENCY ORDERS AND RULES:**

**A.** Notwithstanding other provisions of 19.15.2 NMAC through 19.15.39 NMAC, in the event the division or commission finds an emergency exists that requires an order's or rule's issuance without a hearing, the emergency rule or order shall have the same validity as if the division or commission held a hearing before the division or commission after due notice. The emergency rule or order shall remain in force no longer than 15 days from its effective date.

**B.** Notwithstanding other provisions of 19.15.2 NMAC through 19.15.39 NMAC, if the division or commission finds an emergency exists, the division or commission may conduct a hearing on an application within less than 30 days after party files an application and the director may set the notice period at the director's discretion.

[19.15.2.11 NMAC - Rp, 19.15.14.1225 NMAC, 12/1/2008]

**19.15.2.12 FILING AND NOTIFICATION:** All requirements in the rules:

**A.** to file a form or application with the division or commission, including documents required to be filed with district offices or the Santa Fe office, shall be accomplished by using the applicable online process on the division's website,

**B.** to otherwise notify, advise, contact, or report to the division, including to any unit of the division (such as a bureau or office) or any division official (such as the director or a bureau chief), may be accomplished by electronic mail or as otherwise provided on the division's website; the division shall provide contact instructions on the division's website, and

**C.** to file an original financial assurance instrument with the division as provided in 19.15.8 NMAC shall require delivery to the Santa Fe office unless otherwise directed by the division.

[19.15.2.12 NMAC - Rp, 19.15.15.1304 NMAC, 12/1/2008; 19.15.2.12 NMAC - Rp, 19.15.2.12 NMAC, 8/23/2022]

**19.15.2.13 COMPUTATION OF TIME:** In computing a period of time prescribed by the Oil and Gas Act, the rules or an order, the division and commission shall comply with the Uniform Statute and Rule Construction Act, Section 12-2A-7 NMSA 1978.

[19.15.2.13 NMAC - Rp, 19.15.14.1226 NMAC, 12/1/2008; A, 8/23/2022]

**19.15.2.14 MEETINGS BY TELECONFERENCE:** Pursuant to Section 10-15-1 NMSA 1978, commission members may participate in commission meetings and hearings by conference telephone or other similar communications equipment when it is otherwise difficult or impossible for members to attend the meeting or

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hearing in person. Each member participating by conference telephone or other similar communications equipment shall be identified when speaking. Participants shall be able to hear each other at the same time. Members of the public hearing attending the meetings or hearing shall be able to hear commission members who speak during the meeting or hearing.

[19.15.2.14 NMAC - Rp, 19.15.1.20 NMAC, 12/1/2008]

**19.15.2.15 AUTHORITY TO COOPERATE WITH OTHER AGENCIES:** The division may from time to time enter into arrangements with state and federal governmental agencies, industry committees and individuals with respect to special projects, services and studies relating to oil and gas conservation and the associated protection of fresh waters.

[19.15.2.15 NMAC - Rp, 19.15.1.17 NMAC, 12/1/2008]

**19.15.2.16 DUTIES AND AUTHORITY OF DIVISION PERSONNEL:** Division personnel have the authority and duty to enforce division rules. Upon a showing by an operator that changes are necessary to avoid waste or protect public health or the environment, division personnel may allow minor deviations from approved field operational plans such as drilling and plugging plans. The operator shall file a Form C-103 as a notice of intention showing the change of plans within two business days of the approval.

[19.15.2.16 NMAC - Rp, 19.15.15.1303, 12/1/2008; A, 8/23/2022]

**19.15.2.17 ORGANIZATIONAL UNITS:** When necessary to assist in the administration of the Oil and Gas Act, the director may divide the state into districts or other organizational units as appropriate. Upon establishment of, or revisions to, such units, the director shall provide or amend a map on the division's website with the boundaries of the units. Contact information for the units, including any assigned personnel, shall be maintained on the division's website.

[19.15.2.17 NMAC - Rp, 19.15.15.1301 NMAC, 12/1/2008; 19.15.2.17 NMAC - Rp, 19.15.2.17 NMAC, 8/23/2022]

**19.15.2.18 RENUMBERING OR REORGANIZATION OF RULES:** When the commission approves reorganization or renumbering of division rules, either through amendment or repeal and replacement, persons with permits, orders or agreements that reference rules that have been reorganized or renumbered shall comply with the rules as reorganized or renumbered.

[19.15.2.18 NMAC - N, 12/1/2008]

### HISTORY of 19.15.2 NMAC:

**History of Repealed Material:** 19.15.1 NMAC, General Provisions (filed 04/27/2001); 19.15.14 NMAC, Procedure (filed 09/16/2005); and 19.15.15 NMAC, Administration (filed 07/12/2004) all repealed 12/1/2008.

### NMAC History:

Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 1-7, 11, 13, 17, & 20) (filed 04/27/2001); 19.15.14 NMAC, Procedure (Sections 1225 and 1226) (filed 09/16/2005); and 19.15.15 NMAC, Administration (Sections 1301 and 1303) (filed 07/12/2004) were replaced by 19.15.2 NMAC, General Provisions for Oil and Gas Operations, effective 12/1/2008.

# EXHIBIT 1-B

## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.5 NMAC

### TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 15 OIL AND GAS PART 5 ENFORCEMENT AND COMPLIANCE

**19.15.5.1 ISSUING AGENCY:** Energy, Minerals and Natural Resources Department, Oil Conservation Division.  
[19.15.5.1 NMAC - N, 12/1/2008]

**19.15.5.2 SCOPE:** 19.15.5 NMAC applies to persons engaged in oil and gas development and production within New Mexico.  
[19.15.5.2 NMAC - N, 12/1/2008]

**19.15.5.3 STATUTORY AUTHORITY:** 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, Section 70-2-12, Section 70-2-31 and Section 70-2-31.1 NMSA 1978.  
[19.15.5.3 NMAC - N, 12/1/2008, A, 2/25/2020]

**19.15.5.4 DURATION:** Permanent.  
[19.15.5.4 NMAC - N, 12/1/2008]

**19.15.5.5 EFFECTIVE DATE:** December 1, 2008, unless a later date is cited at the end of a section.  
[19.15.5.5 NMAC - N, 12/1/2008]

**19.15.5.6 OBJECTIVE:** To establish a process to ensure compliance with the Oil and Gas Act, division rules and division and commission orders.  
[19.15.5.6 NMAC - N, 12/1/2008]

**19.15.5.7 DEFINITIONS: [RESERVED]**  
[See 19.15.2.7 NMAC for definitions.]

**19.15.5.8 ENFORCEMENT OF STATUTES AND RULES:** The division is charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas, including the prevention of waste and the protection of correlative rights, and the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations.  
[19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/2008, A, 2/25/2020]

#### **19.15.5.9 COMPLIANCE:**

- A.** An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:
- (1) currently meets the financial assurance requirements of 19.15.8 NMAC;
  - (2) is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;
  - (3) does not have a penalty assessment that is unpaid more than 30 days after issuance of the order assessing the penalty; ~~and~~
  - (4) currently meets the waste prevention requirements in 19.15.27 and -28 NMAC; and
  - (4)(5) has no more than the following number of wells out of compliance with 19.15.25.8 NMAC that are not subject to an agreed compliance or final order setting a schedule for bringing the wells into compliance with 19.15.25.8 NMAC and imposing sanctions if the schedule is not met:
    - (a) two wells or fifty percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;
    - (b) five wells if the operator operates between 101 and 500 wells;
    - (c) seven wells if the operator operates between 501 and 1000 wells; and
    - (d) 10 wells if the operator operates more than 1000 wells.
- B. Inactive wells.**
- (1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:
    - (a) shows no production or injection for past 15 months;
    - (b) does not have its well bore plugged in accordance with 19.15.25.9 NMAC

## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.5 NMAC

through 19.15.25.11 NMAC;

(c) is not in approved temporary abandonment in accordance with 19.15.25.12 NMAC through 19.15.25.14 NMAC; and

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

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

**C. Financial assurance.** The division shall make available on its website and update weekly the status of operators' financial assurance that 19.15.8 NMAC requires, according to division records. [19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/2008; A, 11/30/2016, A, 2/25/2020]

### 19.15.5.10 ENFORCEMENT:

**A. General.** Whenever the division determines that a person violated or is violating the Oil and Gas Act or a provision of any rule, order, permit or authorization issued pursuant to the Oil and Gas Act, the division may seek a sanction by:

(1) issuing a temporary cessation order if it determines that the alleged violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The temporary cessation order shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

(2) issuing a notice of violation; or

(3) commencing a civil action in district court.

**B. Sanctions.** The division may seek one or more of the following sanctions:

(1) a civil penalty;

(2) modification, suspension, cancellation or termination of a permit or authorization;

(3) plugging and abandonment of a well;

(4) remediation and restoration of a well location and associated facilities, including the removal of surface and subsurface equipment and other materials;

(5) remediation and restoration of a location affected by a spill or release;

(6) forfeiture of financial assurance;

(7) shutting in a well or wells; and

(8) any other remedy authorized by law.

**C. Notice of violation.**

(1) A notice of violation issued by the division shall state with reasonable specificity:

(a) the identity of the alleged violator;

(b) the nature and factual and legal basis of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;

(c) whether compliance is required immediately or within a specified time period;

(d) the sanction(s) available for the alleged violation, the sanction(s) proposed by the division, and a statement that the division will take into consideration the violators good faith efforts to comply with the applicable requirements;

(e) the availability of a process for informal review and resolution of the alleged violation, and the procedure to initiate the informal review process, including the contact information of the appropriate division employee;

(f) a statement that if the notice of violation is not informally resolved within 30 days of service, the division will hold a hearing, but that the hearing shall not prohibit the parties from negotiating and settling the notice of violation at any time; and

(g) the date of the hearing, which shall be no later than 90 days after the date of the notice of violation.

(2) The division shall serve the notice of violation on the alleged violator by certified mail, and may provide the notice of violation by electronic mail if possible.

(3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives the alleged violator's right of review by the commission.

(4) If the division and the alleged violator fail to enter a stipulated final order within 30 days

## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.5 NMAC

of service, the division shall hold a hearing at the division's principal office.

**D. Civil penalties.** A civil penalty assessed by the division shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of noncompliance under the Oil and Gas Act and other relevant factors. The civil penalty assessed by the division shall not exceed \$2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed \$10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed \$200,000.

**E. Adjudicatory procedures.** These adjudicatory procedures shall apply to hearings on temporary cessation orders and notices of violation before the division, and the provisions of 19.15.4 NMAC shall not apply.

**(1) General provisions.**

**(a) Designation of parties.** The parties shall be the division and the person served with a notice of violation or order, referred to herein as "respondent".

**(b) Representation.** Respondent may appear and participate in a hearing either pro se or through counsel, provided that a collective entity, including a corporation, partnership, unincorporated association, political subdivision or governmental agency shall appear only through counsel or a duly authorized officer or member.

**(c) Rule applicability.** In the absence of a specific provision in this section, the hearing examiner may apply the New Mexico rules of civil procedure and evidence.

**(d) Computation of time.** In computing any period of time under 19.15.5.10 NMAC the day of the event from which the designated period begins to run shall not be included, and the last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which case the time is extended until the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service, and service is by first class mail only, three days is added to the prescribed period.

**(e) Extensions of time.** The hearing examiner may grant an extension of time to file a document or continue a hearing upon timely motion upon consent of the parties, or for good cause shown after consideration of prejudice to the other party and undue delay to the hearing.

**(f) Filing of documents.** A party shall file the original of each document and serve a copy on the other party, accompanied by a certificate of service identifying the method and address used to complete service.

**(g) Service of documents.** A party shall serve each document on the other party or its counsel, as applicable, by personal service or first class mail, or by electronic mail if the parties agree.

**(h) Form of documents.** Unless otherwise ordered, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, shall contain the caption of the notice of violation or temporary cessation order on the first page and shall be signed by the party or its counsel, as applicable.

**(2) Pre-hearing procedures.**

**(a) Docketing.** At the expiration of the 30 day period for informal resolution of a notice of violation, when a party appeals a final order under Subsection E of 19.15.5.10 NMAC, or when the division gives notice that it intends to extend a temporary cessation order, the division shall docket the notice of violation or order for hearing, identify the factual basis for the alleged violation and proposed sanction(s), and serve a notice of docketing on respondent.

**(b) Answer.** No later than 10 days after service of the notice of docketing, respondent shall file an answer stating its objection, if any, and the factual and legal basis for such objection, to each alleged violation and proposed sanction in the notice of violation or order.

**(c) Hearing examiner.** The hearing examiner shall have the authority to take all measures necessary to conduct a fair, impartial and efficient adjudication of issues, and to maintain order and avoid undue delay, including the authority to conduct pre-hearing conferences and hearings, rule on procedural and evidentiary motions, govern the examination of witnesses and the admission of evidence, issue orders and prepare a recommended decision. After the division issues the notice of violation, the hearing examiner shall not discuss ex parte the merits of the proceeding with the division or the respondent.

**(d) Pre-hearing conference.** The hearing examiner may hold a pre-hearing conference to narrow the issues, eliminate or resolve preliminary matters and encourage settlement, and may issue a pre-hearing order on procedural and evidentiary matters, including a schedule for the filing of motions and testimony, stipulations regarding alleged violations and requested relief, including proposed civil penalties or



## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.5 NMAC

elements thereof, and any other matter necessary for the efficient conduct of the hearing.

(e) **Pre-hearing statements.** No later than seven calendar days before the hearing, a party who intends to present evidence at the hearing shall file and serve a statement that contains the following information:

(i) the name, address, employment and qualifications, including education and work history, of each witness;  
(ii) a statement identifying the opinions and factual assertions supporting each witness' testimony;  
(iii) the exhibits and other evidence to be presented by each witness; and  
(iv) procedural matters that are to be resolved prior to the hearing.

(f) **Enforcement.** The hearing examiner may enforce the requirements of 19.15.5.10 NMAC by any appropriate means, including the exclusion of testimony, exhibits and other evidence.

(g) **Motions.**

(i) **General.** All motions, except motions made orally during the hearing, shall be in writing, specify the grounds for the motion, state the relief sought, indicate whether the motion is opposed or unopposed and be served on the other party.

(ii) **Unopposed motions.** An unopposed motion shall state that concurrence of the other party was obtained and shall be accompanied by a proposed order approved by the parties.

(iii) **Opposed motions.** An opposed motion shall state either that concurrence was sought and not obtained, or the reason that concurrence was not sought.

(iv) **Response.** No later than 10 days after service of an opposed motion, the opposing party may file a response. Failure to file a response shall be deemed a waiver of any objection to the granting of the motion.

(v) **Reply.** No later than 10 days after service of a response to an opposed motion, the moving party may file a reply.

(vi) **Decision.** The hearing examiner shall decide all motions without a hearing, unless otherwise ordered by the hearing examiner sua sponte or upon written request of a party.

(h) **Shortening Deadlines.** On the written request of the alleged violator showing good cause, the hearing examiner may shorten the deadlines specified in Paragraph (2) of Subsection E of 19.15.10 NMAC to conduct the hearing on the division's application for a temporary cessation order as expeditiously as possible. If the division opposes the request to shorten deadlines, the procedures for opposed motions set forth in Subparagraph (g) of Paragraph (2) of Subsection G of 19.15.5.10 NMAC shall not apply and the hearing examiner shall decide the request, with or without hearing, as quickly as practicable.

(3) **Hearing procedures.**

(a) **General.** The hearing examiner shall admit all evidence, unless he or she determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded by the New Mexico rules of evidence is not admissible.

(b) **Witness examination.** Witnesses shall be examined orally and under oath or affirmation, provided that the parties may stipulate to the admission of the testimony of a witness, or part thereof. Parties shall have the right to cross-examine a witness, provided that the hearing examiner may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony.

(c) **Exhibits.** A party shall label each exhibit used during the hearing or offered into evidence with a designation identifying the party, the witness using or offering the exhibit and a serial number.

(d) **Burden of persuasion.** The division has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the alleged violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

(4) **Post-hearing procedures.**

(a) **Transcript.** The hearing shall be transcribed verbatim. Respondent may order a copy of the transcript from the reporter at its own expense.

(b) **Recommended decision.** The hearing examiner shall prepare a recommended decision for review by the director.

(c) **Final order.** The director shall file a final order addressing the material issues of fact and law and may assess a sanction for each alleged violation, which shall be served on the division and the respondent.



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**F. Commission review.** No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. The commission shall conduct a de novo review, provided however, that the parties may stipulate to the issues to be heard and to the admission of all or part of the record before the division. The commission shall conduct the hearing in accordance with the adjudicatory procedures in Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2), Paragraph (3) and Subparagraph (a) of Paragraph (4) of Subsection E of 19.15.5.10 NMAC.

**G. Rehearings.** A party may file an application for rehearing with the commission pursuant to Section 70-2-25 NMSA 1978.

**H. Payment of civil penalty.** Respondent shall pay the full amount of the civil penalty assessed in the final order (i) no later than 30 days after the director serves the final order, or (ii) if respondent files a notice of appeal to the commission or the district court pursuant to Section 70-2-25 NMSA 1978, no later than 30 days after the commission or the district court files a final order or the appeal is withdrawn.

**I. Resolution after commencement of hearing.** If the parties agree to resolve a notice of violation at any time after the commencement of a hearing, they shall file a stipulated final order signed by both parties. The stipulated final order shall state that respondent admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives respondent's right of review by the commission or the court, as applicable.

**J. Publication.** On or about October 1 of each year, the division shall publish a list identifying the temporary cessation orders and notices of violation issued during the preceding year, along with the civil penalty paid, if any.

**K. Reservation.** Nothing in 19.15.5.10 NMAC precludes the division from bringing any other action and seeking any relief allowed by the Oil and Gas Act.  
[19.15.5.10 NMAC – Rp, 19.15.5.10 NMAC, 2/25/2020]

19.15.5.11 **ENFORCEABILITY OF PERMITS AND ADMINISTRATIVE ORDERS:** A person who conducts an activity pursuant to a permit, administrative order or other written authorization or approval from the division shall comply with every term, condition and provision of the permit, administrative order, authorization or approval.  
[19.15.5.11 NMAC - Rp, 19.15.1.41 NMAC, 12/1/2008]

### **HISTORY of 19.15.5 NMAC:**

**History of Repealed Material:** 19.15.1 NMAC, General Provisions (filed 04/27/2001) and 19.15.14 NMAC, Procedure (filed 09/16/2005) repealed 12/1/2008.

### **NMAC History:**

Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 12, 40 & 41) (filed 04/27/2001) and 19.15.14 NMAC, Procedure (Section 1227) (filed 09/16/2005), were replaced by 19.15.5 NMAC, Enforcement and Compliance, effective 12/1/2008.

# EXHIBIT 1-C

## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.8 NMAC

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

**19.15.8.1           ISSUING AGENCY:** Oil Conservation Commission.  
[19.15.8.1 NMAC - N, 12/1/2008; A, 1/15/2019]

**19.15.8.2           SCOPE:** 19.15.8 NMAC applies to persons engaged in oil and gas development and production within New Mexico.  
[19.15.8.2 NMAC - N, 12/1/2008]

**19.15.8.3           STATUTORY AUTHORITY:** 19.15.8 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, Section 70-2-12 and Section 70-2-14 NMSA 1978.  
[19.15.8.3 NMAC - N, 12/1/2008; A, 1/15/2019]

**19.15.8.4           DURATION:** Permanent.  
[19.15.8.4 NMAC - N, 12/1/2008]

**19.15.8.5           EFFECTIVE DATE:** December 1, 2008, unless a later date is cited at the end of a section.  
[19.15.8.5 NMAC - N, 12/1/2008]

**19.15.8.6           OBJECTIVE:** To establish financial assurance requirements for persons, firms, corporations or associations who have drilled or acquired, are drilling or propose to drill or acquire an oil, gas or injection or other service well to furnish financial assurance acceptable to the division.  
[19.15.8.6 NMAC - N, 12/1/2008]

**19.15.8.7           DEFINITIONS: [RESERVED]**  
[See 19.15.2.7 NMAC for definitions.]

**19.15.8.8           GENERAL REQUIREMENTS FOR FINANCIAL ASSURANCE:**

**A.**       The operator shall file financial assurance documents with the division's Santa Fe office and obtain approvals and releases of financial assurance from that office.

**B.**       Financial assurance documents shall be on forms prescribed by or otherwise acceptable to the division.

**C.**       The division may require proof that the individual signing for an entity on a financial assurance document or an amendment to a financial assurance document has the authority to obligate that entity.

**D.**       Any time an operator changes the corporate surety, financial institution or amount of financial assurance, the operator shall file updated financial assurance documents on forms prescribed by the division. Notwithstanding the foregoing, if an operator makes other changes to its financial assurance documents, the division may require the operator to file updated financial assurance documents on forms prescribed by the division.

[19.15.8.8 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015]

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

**A.**       **Applicability.** An operator who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well within this state shall furnish a financial assurance acceptable to the division in accordance with 19.15.8.9 NMAC and in the form of an irrevocable letter of credit, plugging insurance policy or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with commission rules, unless the well is covered by federally required financial assurance. The division shall not approve, and the operator shall not proceed with, any proposed drilling or acquisition until the operator has furnished the appropriate 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.

## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.8 NMAC

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 ~~\$150,000 per well 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, ~~to be adjusted for inflation pursuant to Subsection G of 19.15.8.9 NMAC, subject to any limitations in Section 70-2-14 NMSA 1978:~~

(a) ~~\$50,000 for one to 10 wells; \$200,000 for one to five wells; and~~

(b) ~~\$75,000 for 11 to 50 wells; \$250,000 for six or more wells.;~~

(c) ~~\$125,000 for 51 to 100 wells; and~~

(d) ~~\$250,000 for more than 100 wells.~~

(3) ~~Notwithstanding the foregoing, an operator shall provide a one well financial assurance in the amount of \$150,000 for each well in each of the following categories:~~

(a) ~~Stripper well properties prior to change of operator. Every "stripper well property" as defined in Subsection M of 19.15.6.7 NMAC, prior to a change of operator for that stripper well property pursuant to 19.15.9.9 NMAC. The division shall not approve a request for change of operator for a stripper well property until the required financial assurance is in place.~~

(b) ~~An operator whose total production across all wells in New Mexico is equal to or less than 1,000 barrels of oil equivalent per day average during the calendar year, or for whom all of the operator's inactive wells, wells in approved and expired temporarily abandonment status, and stripper well properties in New Mexico total 15 percent or more of the operator's total wells in the state. The determination whether an operator meets either criterion in this category shall be made as of December 31 of each year, and any change in the amount of financial assurance required under this subparagraph shall be in place as of March 1 of the following year.~~

D. **Inactive wells, wells in approved temporarily abandoned status, and wells in expired temporarily abandoned status.** An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC that ~~have been are inactive, in approved temporarily abandoned status for more than two years or expired temporarily abandoned status,~~ or for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories, ~~to be adjusted for inflation pursuant to Subsection G of 19.15.8.9 NMAC:~~

(1) a one well financial assurance in the amount of ~~\$150,000 per well; \$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 ~~amounting to an average of \$150,000 per well~~ 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 in an amount as determined by Section 19.15.8.9 NMAC, subject to any limitations in Section 70-2-14 NMSA 1978.~~

F. ~~As used in this Section, "consumer price index" means the consumer price index, not seasonally adjusted, for all urban consumers, United States city average for all items, or its successor index, as published by the United States department of labor for a twelve-month period ending September 30.~~

G. ~~On January 1, 2027 and on January 1 of each successive year, the division may adjust the financial assurance amounts provided by Subsections A through F of this Section by multiplying the financial assurance as of January 1, 2026 by a fraction, the numerator of which is the consumer price index ending in September of the previous year and the denominator of which is the consumer price index ending September 2025; provided that the financial assurances shall not be adjusted below the minimum amounts provided in Subsection A through F of this Section as a result of a decrease in the consumer price index. By November 1, 2026 and by November 1 of each successive year, the division shall post on its website the financial assurance requirements in Subsection A through E of this Section for the next year.~~

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

### 19.15.8.10 ADDITIONAL REQUIREMENTS FOR CASH AND SURETY BONDS:

A. Surety bonds shall be issued by a reputable corporate surety authorized by the office of the superintendent of insurance to do business in the state. The surety shall be listed on U.S. Department of the Treasury circular 570.

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

[19.15.8.10 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015]

### 19.15.8.11 ADDITIONAL REQUIREMENTS FOR LETTERS OF CREDIT:

A. The division may accept irrevocable letters of credit issued by national or state-chartered banking associations.

B. Letters of credit shall be irrevocable for a term of not less than five years, unless the applicant shows good cause for a shorter time period.

C. Letters of credit shall provide for automatic renewal for successive, like terms upon expiration, unless the issuer has notified the division in writing of non-renewal at least 30 days prior to expiration.

D. The division may forfeit and collect a letter of credit if not replaced by an approved financial assurance at least 30 days before the expiration date.

E. Authorized representatives of the operator and the depository institution shall execute a document evidencing the letter of credit's terms and conditions.

[19.15.8.11 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015]

### 19.15.8.12 RELEASE OF FINANCIAL ASSURANCE:

A. The division shall release a financial assurance document upon the operator's or surety's written request if all wells drilled or acquired under that financial assurance have been plugged and abandoned and the location restored and remediated and released pursuant to 19.15.25.9 NMAC through 19.15.25.11 NMAC, or have been covered by another financial assurance the division has approved.

B. Transfer of a property or a change of operator does not of itself release a financial assurance. The division shall not approve a request for change of operator for a well until the new operator has the required financial assurance in place and is otherwise in compliance with all requirements of 19.15.5.9 NMAC and 19.15.9.9 NMAC.

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

### 19.15.8.13 FORFEITURE OF FINANCIAL ASSURANCE:

A. Upon the operator's failure to properly plug and abandon and restore and remediate the location of a well or wells a financial assurance covers, the division shall give notice to the operator and surety, if applicable, and hold a hearing as to whether the well or wells should be plugged and abandoned and the location restored and remediated in accordance with a division-approved plugging program. If it is determined at the hearing that the operator has failed to plug and abandon the well and restore and remediate the location as provided for in the financial assurance or division rules, the director shall issue an order directing the well to be plugged or abandoned and the location restored and remediated in a time certain. Such an order may also direct the forfeiture of the financial assurance upon the failure or refusal of the operator, surety or other responsible party to properly plug and abandon the well and restore and remediate the location.

B. If the financial assurance's proceeds exceed the costs the division incurred plugging and abandoning the well and restoring and remediating the location the financial assurance covers, the division shall return the excess to the surety or the operator, as appropriate.

## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.8 NMAC

C. If the financial assurance's proceeds are not sufficient to cover all the costs the division incurred in plugging and abandoning the well and restoring and remediating the location, the division may seek indemnification from the operator as provided in Subsection E of Section 70-2-14 NMSA 1978.

D. The division shall deposit forfeitures and funds collected pursuant to a judgment in a suit for indemnification in the oil and gas reclamation fund.  
[19.15.9.13 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008]

### 19.15.8.14 EFFECTIVE DATES.

A. 19.15.8 NMAC applies to wells drilled or acquired after December 15, 2005.

B. As to all other wells, 19.15.8 NMAC is effective January 1, 2008.

C. The 2018 amendments to 19.15.8.9 NMAC apply to applications for permits to drill, deepen or plug back and applications for approved temporary abandonment filed on or after January 15, 2019, and for all other wells on April 15, 2019.

[19.15.8.14 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 1/15/2019]

### 19.15.8.15 ADDITIONAL REQUIREMENTS FOR PLUGGING INSURANCE POLICIES:

A. The plugging insurance policy must be issued by a company authorized by the office of the superintendent of insurance to do business in New Mexico.

B. The policy shall name a specific well and name the state of New Mexico as the owner of the policy and contingent beneficiary.

C. The policy shall name a primary beneficiary who agrees to plug the specified wellbore.

D. The policy shall be fully prepaid and cannot be canceled or surrendered.

E. The policy shall continue in effect until the specified wellbore has been plugged.

F. The policy shall provide that benefits will be paid when, but not before, the specified wellbore has been plugged in accordance with division rules in effect at the time of plugging.

G. The policy shall provide benefits that are not less than an amount equal to the one-well financial assurance required by division rules. If, subsequent to an operator obtaining an insurance policy, the one-well financial assurance requirement applicable to the operator's well covered by said policy increases, either because the well is deepened or the division's rules are amended, the operator will meet the additional financial assurance requirement by complying with one of the requirements below.

(1) The operator's existing policy benefit equals or exceeds the revised requirement.

(2) The operator obtains and files with the division within 30 days an amendment increasing the policy benefit by the amount of the increase in the applicable financial assurance requirement.

(3) The operator obtains financial assurance equal to the amount, if any, by which the revised requirement exceeds the policy benefit and files said financial assurance with the division within 30 days.

[19.15.8.15 NMAC - N, 6/30/2015]

**19.15.8.16 DUTY TO REPORT:** Any operator who filed for bankruptcy shall provide notice to the division, in writing, through the processes provided for under the rules of the United States bankruptcy court.

[19.15.8.16 NMAC - N, 6/30/2015]

### HISTORY of 19.15.8 NMAC:

**History of Repealed Material:** 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/2008.

### NMAC History:

That applicable portion of 19.15.3 NMAC, Drilling (Section 101) (filed 10/29/2001) was replaced by 19.15.8 NMAC, Financial Assurance, effective 12/1/2008.

# EXHIBIT 1-D

## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.9 NMAC

**TITLE 19 NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 15 OIL AND GAS**  
**PART 9 WELL OPERATOR PROVISIONS**

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

**19.15.9.2 SCOPE:** 19.15.9 NMAC applies to persons or entities operating oil or gas wells within New Mexico.  
[19.15.9.2 NMAC - N, 12/1/08]

**19.15.9.3 STATUTORY AUTHORITY:** 19.15.9 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.  
[19.15.9.3 NMAC - N, 12/1/08]

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

**19.15.9.5 EFFECTIVE DATE:** December 1, 2008, unless a later date is cited at the end of a section.  
[19.15.9.5 NMAC - N, 12/1/08]

**19.15.9.6 OBJECTIVE:** To require an operator of a well or wells to register with the division prior to commencing operations and to require the reporting of a change of operator or a change of name to the division.  
[19.15.9.6 NMAC - N, 12/1/08]

**19.15.9.7 DEFINITIONS:** [RESERVED]  
[See 19.15.2 NMAC for definitions.]  
[19.15.9.7 NMAC - N, 12/1/08]

**19.15.9.8 OPERATOR REGISTRATION:**

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

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

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

(3) the financial assurance 19.15.8 NMAC requires.

**B.** The division may deny registration as an operator if:

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

(2) an officer, director, partner in the applicant or person with an interest in the applicant exceeding 25 percent, is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(3) the applicant is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

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

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

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

**D.** The division may require an operator or applicant to identify its current and past officers, directors and partners and its current and past ownership interest in other operators.



## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.9 NMAC

[19.15.9.8 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

### 19.15.9.9 CHANGE OF OPERATOR:

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

B. The operator of record with the division and the new operator shall apply for a change of operator by jointly filing a form C-145 using the division's web-based online application. If the operator of record with the division is unavailable, the new operator shall apply to the division for approval of change of operator without a joint application. The operator shall make such application in writing and provide documentary evidence of the applicant's right to assume operations; a certification that the new operator is in compliance with federal and state oil and gas laws and regulations in each state in which the new operator does business; a disclosure of the new operator's aggregate asset retirement obligations, as defined in 19.15.2.7 NMAC, across its operations; a disclosure of any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC; and a disclosure whether the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC. The new operator shall not commence operations until the division approves the application for change of operator.

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

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

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

(3) any officer, director, partner in the new operator or person with an interest in the new operator exceeding 25 percent, who is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(4) the new operator is or was within the past five years an officer, director, partner, or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

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

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

D. In determining whether to grant or deny a change of operator based on Paragraphs 1, 2, 3, and 4 of Subsection C ~~when the new operator is not in compliance with Subsection A~~ of 19.15.5.9 NMAC, the director or the director's designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having more than the allowed number of wells out of compliance with 19.15.25.8 NMAC. If the non-compliance is caused by the operator having more than the allowed number of wells not in compliance with 19.15.25.8 NMAC, the director or director's designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

[19.15.9.9 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

### 19.15.9.10 CHANGE OF NAME:

A. A change of operator name occurs when the name of the entity responsible for a well or wells

## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.9 NMAC

changes but the entity does not change. For a change of name, the OGRID number remains the same, but division records are changed to reflect the new operator name.

**B.** An operator shall apply for a change of name by filing a form C-146 using the division's web-based online application and supplying documentary proof that the change is a name change and not a change of operator. If the operator is a corporation, limited liability company or limited partnership, the name must be registered with the public regulation commission or the New Mexico secretary of state, as applicable. The division shall not approve a change of name until the state land office and the taxation and revenue department have cleared the change of name on the OGRID.

[19.15.9.10 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

### **19.15.9.11 EXAMPLES OF CHANGE OF OPERATOR AND CHANGE OF NAME:**

**A.** Mr. Smith, a sole proprietor, operates five wells under the name "Smith oil company". Mr. Smith changes the name of his company to "Smith production company". The name of the entity operating the wells has changed, but the entity has not changed. Mr. Smith should apply for a change of name.

**B.** Mr. Smith incorporates his business, changing from the sole proprietorship, "Smith production company", to a corporation: "Smith production company, inc.". The entity responsible for the wells has changed, and Mr. Smith and "Smith production company, inc." should apply for a change of operator.

**C.** Smith production company, inc., a New Mexico operator, merges with XYZ, inc., which does not operate in New Mexico. At the surviving entity's election, this transaction may be treated as a change of name from Smith production company, to XYZ, inc., maintaining the existing OGRID, or as a change of operator, with a new OGRID.

**D.** Two New Mexico operators, Smith production company, inc. and Jones production company, inc., merge. The surviving corporation is Jones production company, inc. A different entity now operates the wells Smith production company, formerly operated, and the wells must be placed under that entity's OGRID. Jones production company, inc. and Smith production company, inc. should apply for a change of operator as to the wells Smith production company, inc. operated.

[19.15.9.11 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

### **HISTORY of 19.15.9 NMAC:**

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

### **NMAC History:**

That applicable portion of 19.15.3 NMAC, Drilling (Section 100) (filed 11/30/2005) was replaced by 19.15.9 NMAC, Well Operator Provisions, effective 12/1/08.

# EXHIBIT 1-E

## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.25 NMAC

### TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 15 OIL AND GAS PART 25 PLUGGING AND ABANDONMENT OF WELLS

**19.15.25.1 ISSUING AGENCY:** Oil Conservation Commission.  
[19.15.25.1 NMAC - Rp, 19.15.4.1 NMAC, 12/1/2008; A, 1/15/2019]

**19.15.25.2 SCOPE:** 19.15.25 NMAC applies to persons that operate oil or gas wells within New Mexico.  
[19.15.25.2 NMAC - Rp, 19.15.4.2 NMAC, 12/1/2008]

**19.15.25.3 STATUTORY AUTHORITY:** 19.15.25 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-12 NMSA 1978, which authorizes the division to require dry or abandoned wells to be plugged so as to confine oil, gas or water in the strata in which they are found and to prevent them from escaping into other strata.  
[19.15.25.3 NMAC - Rp, 19.15.4.3 NMAC, 12/1/2008]

**19.15.25.4 DURATION:** Permanent.  
[19.15.25.4 NMAC - Rp, 19.15.4.4 NMAC, 12/1/2008]

**19.15.25.5 EFFECTIVE DATE:** December 1, 2008, unless a later date is cited at the end of a section.  
[19.15.25.5 NMAC - Rp, 19.15.4.5 NMAC, 12/1/2008]

**19.15.25.6 OBJECTIVE:** To establish requirements for properly abandoning and plugging wells drilled for oil or gas or service wells including seismic, core, exploration or injection wells or placing the wells in temporary abandonment in order to protect public health, fresh water and the environment.  
[19.15.25.6 NMAC - Rp, 19.15.4.6 NMAC, 12/1/2008]

**19.15.25.7 DEFINITIONS: [RESERVED]**  
[See 19.15.2.7 NMAC for definitions.]

#### **19.15.25.8 WELLS TO BE PROPERLY ABANDONED:**

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

**B.** The operator shall either properly plug and abandon a well or apply to the division to place the well in approved temporary abandonment in accordance with 19.15.25 NMAC within ~~90~~ 30 days after:

- (1) a 60 day period following suspension of drilling operations; or
- ~~(2) a determination that a well is no longer usable for beneficial purposes; or~~
- ~~(2)(3)~~ a period of one year in which a well has been ~~continuously~~ inactive.

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

#### **19.15.25.9 NOTICE OF PLUGGING:**

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

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

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

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

#### **19.15.25.10 PLUGGING:**

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

## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.25 NMAC

the notice of intention to plug.

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

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

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

- (1) level the location;
- (2) remove deadmen and other junk; and
- (3) take other measures necessary or required by the division to restore the location to a safe

and clean condition.

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

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

[19.15.25.10 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

### 19.15.25.11 REPORTS FOR PLUGGING AND ABANDONMENT:

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

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

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

[19.15.25.11 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

### 19.15.25.12 APPROVED TEMPORARY ABANDONMENT:

**A.** The division may place a well in approved temporary abandonment for a period of up to ~~five~~ **two** years upon a demonstration from the operator that the well will be used for beneficial use within the approved period of temporary abandonment. The operator's demonstration shall include a detailed explanation why the well should be placed in temporary abandonment, how the well will be put to beneficial use in the future including supporting technical and economic data, a detailed plan that describes the ultimate disposition of the well, the time frame for that disposition, and any other information the division determines appropriate, including a current and complete well bore diagram; geological evidence; geophysical data; well casing information; waste removal and disposition; production and reservoir engineering; leasing status; geophysical logs, e.g., cement bond logs, caliper logs, and casing inspection logs; and health, safety, and environmental information. The division shall approve, approve with conditions, or deny a request. Such conditions may include conditions to protect human health and the environment. If the division denies a request, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

**B.** Prior to the expiration of an approved temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location, or apply for a new approval to temporarily abandon the well for a period of up to one year upon the same terms and conditions required in Subsection A of this Section. The division shall approve, approve with conditions, or deny a request. Such conditions may include conditions to protect human health and the environment. If the division denies a request, the operator shall permanently plug and abandon the well and restore and remediate the location. An operator may apply for additional one year extensions for approved temporary abandoned status, upon the same terms and conditions as required in Subsection A of this Section, except that a well may not remain in temporary abandonment more than five years unless the commission approves an extension pursuant to Subsection C of this Section. Unless an operator has timely renewed a temporary abandonment, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.25 NMAC

C. Prior to the expiration of five years in temporary abandonment, an operator may apply to the commission to extend temporary abandonment status pursuant to the procedures for adjudicatory proceedings in 19.15.4 NMAC. In any such adjudicatory proceeding, any interested person may intervene pursuant to 19.15.4.11 NMAC. To continue in temporary abandonment, the operator must demonstrate to the commission that the well will be returned to beneficial use within the requested period of temporary abandonment. The request shall include a detailed explanation why the well should be placed in temporary abandonment, how the well will be put to beneficial use in the future and supporting technical and economic data, a detailed plan that describes the ultimate disposition of the well, the time frame for that disposition, and a health and safety plan demonstrating the well's casing and cementing meet the requirements of Subsections B and C of Section 13 of 19.15.25 NMAC and the operator has adequate monitoring procedures in place to ensure such requirements will be met. The commission shall approve, approve with conditions, or deny a request to extend the temporary abandonment. Such conditions may include conditions to protect human health and the environment. An extended term shall not exceed two additional years, upon which time the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

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

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

B-(2) one-third of all wells (rounded to the nearest whole number), if the operator operates

more than five wells.

E. Implementation schedule for existing wells.

(1) Active wells. This Section applies to active wells to wells as of [effective date of amendments].

(2) Inactive wells.

(a) This Section applies to wells that have been inactive for less than two years as of [effective date of amendments].

(b) Operators of wells that have been inactive between two years and less than three years as of [effective date of amendments] may apply to the division for approved temporary abandonment for up to two years, may apply to the division for a one year extension of temporary abandonment one time, and thereafter may apply to the commission for an extension up to two years, all in accordance with this Section.

(c) Operators of wells that have been inactive between three years and less than four years as of [effective date of amendments] may apply to the division for approved temporary abandonment for up to two years with no opportunity for an extension, and thereafter may apply to the commission for an extension up to two years, all in accordance with this Section.

(d) Operators of wells that have been inactive between four years and less than five years as of [effective date of amendments] may apply to the division for approved temporary abandonment for up to one year with no opportunity for an extension, and thereafter may apply to the commission for an extension up to two years, all in accordance with this Section.

(e) Operators of wells that have been inactive five years or more as of [effective date of amendments] shall apply to the commission for approved temporary abandonment for up to two years in accordance with this Section.

(f) Unless an operator of an inactive well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.

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

(3) Wells in expired temporary abandoned status. Any operator of a well in expired temporary abandoned status as of [effective date of amendments] shall apply to the commission to extend temporary abandonment status in accordance with this Section. Unless an operator of an inactive well has renewed a temporary abandonment in accordance with this Paragraph, the operator shall return the well to beneficial use under a plan the division approves or permanently plug and abandon the well and restore and remediate the location.  
[19.15.25.12 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

### 19.15.25.13 REQUEST FOR APPROVAL AND PERMIT FOR APPROVED TEMPORARY ABANDONMENT:

19.15.25 NMAC



## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.25 NMAC

A. An operator seeking approval for approved temporary abandonment shall submit the request on form C-103 ~~a notice of intent~~ to seek approved temporary abandonment for the well setting forth the demonstration required in 19.15.25.12 NMAC and describing the proposed temporary abandonment procedure the operator will use. The operator shall not commence work until the division has approved the request. The operator shall give 24 hours' notice to the appropriate division district office before beginning work.

B. The division shall not approve a permit for approved temporary abandonment until the operator furnishes evidence demonstrating that the well's casing and cementing are mechanically and physically sound and in such condition as to prevent:

- (1) damage to the producing zone;
- (2) emissions to the air or migration of hydrocarbons or water;
- (3) the contamination of fresh water or other natural resources; and
- (4) the leakage of a substance at the surface.

C. The operator shall demonstrate both internal and external mechanical integrity pursuant to Subsection A of 19.15.25.14 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.

F. The division shall specify the permit's expiration date, ~~which shall be not more than five years from the date of approval.~~  
[19.15.25.13 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

### 19.15.25.14 DEMONSTRATING MECHANICAL INTEGRITY:

A. An operator may use the following methods of demonstrating internal casing integrity for wells to be placed in approved temporary abandonment:

- (1) the operator may set a cast iron bridge plug within 100 feet of uppermost perforations or production casing shoe, load the casing with inert fluid and pressure test to 500 psi surface pressure with a pressure drop of not more than 10 percent over a 30 minute period;
- (2) the operator may run a retrievable bridge plug or packer to within 100 feet of uppermost perforations or production casing shoe, and test the well to 500 psi surface pressure for 30 minutes with a pressure drop of not greater than 10 percent over a 30 minute period; or
- (3) the operator may demonstrate that the well has been completed for less than five years ~~and has not been connected to a pipeline.~~

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

- (1) open all casing valves during the internal pressure tests and report a flow or pressure change occurring immediately before, during or immediately after the 30 minute pressure test;
- (2) top off the casing with inert fluid prior to leaving the location;
- (3) report flow during the test in Paragraph (2) of Subsection A of 19.15.25.14 NMAC to the appropriate division district office prior to completion of the temporary abandonment operations; the division may require remediation of the flow prior to approving the well's temporary abandonment.

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

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

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

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

G. Beginning [effective date of amendments], the operator shall conduct the testing required in this Section, and shall submit the chart required in Subsection E of this Section to the division.

[19.15.25.14 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008]

### 19.15.25.15 WELLS TO BE USED FOR FRESH WATER:

19.15.25 NMAC

## APPLICANTS' PROPOSED AMENDMENTS TO 19.15.25 NMAC

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

**B.** The operator shall comply with other requirements contained in 19.15.25.9 NMAC through 19.15.25.11 NMAC regarding plugging, including surface restoration and reporting requirements.

**C.** Upon completion of plugging operations, the operator shall file with the division a written agreement signed by the landowner whereby the landowner agrees to assume responsibility for the well. Upon the filing of this agreement and division approval of well abandonment operations, the operator is no longer responsible for the well, and the division may release bonds on the well.  
[19.15.25.15 NMAC - Rp, 19.15.4.204 NMAC, 12/1/2008]

### **HISTORY of 19.15.25 NMAC:**

**History of Repealed Material: 19.15.4 NMAC, Plugging and Abandonment of Wells (filed 11/29/2001) repealed 12/1/2008.**

### **NMAC History:**

19.15.4 NMAC, Plugging and Abandonment of Wells (filed 11/29/2001) was replaced by 19.15.25 NMAC, Plugging and Abandonment of Wells, effective 12/1/2008.



# EXHIBIT 2

**EXHIBIT B**  
**[PROPOSED] NOTICE OF PUBLIC HEARING**

The New Mexico Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold a public hearing to consider proposed amendments to Commission rules at 19.15.2, -5, -8, -9, and -25 NMAC. Western Environmental Law Center, Citizens Caring for the Future, Conservation Voters New Mexico Education Fund, Diné C.A.R.E., Earthworks, Naeva, New Mexico Interfaith Power and Light, San Juan Citizens Alliance, and Sierra Club propose the amendments. The public hearing will held in-person, online, and by telephone commencing October 21, 2024 at 9:00 am and continuing each weekday thereafter as necessary.

**Purpose of Proposed Amendments.** The purpose of the proposed amendments is to require financial assurance from oil and gas operators that better reflects the actual costs to plug and abandon oil and gas wells in the state, to better protect the State of New Mexico against the risks of wells becoming orphaned, and to better ensure that wells placed in temporary abandonment will be returned to beneficial use within a reasonable period or will be plugged and abandoned.

**Summary of Proposed Amendments.** The proposed amendments would add meeting the waste prevention requirements at 19.15.27 and -28 NMAC as a requirement for an operator to be in compliance at 19.15.5.9.A NMAC; modify financial assurance requirements for wells at 19.15.8 NMAC to better reflect actual well plugging and abandonment costs and risks to the state and add new categories for financial assurance based on risk; modify change of operator requirements at 19.15.9 NMAC to better protect against risks to the state; modify requirements at 19.15.25 NMAC for placing wells in approved temporary abandonment status, maintaining wells in that status, and renewing that status; and modify certain definitions at 19.15.2 NMAC to reflect the other proposed amendments.

**Legal Authority.** The proposed rule is authorized by the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, including Section 70-2-6 (authorizing Commission to exercise jurisdiction, authority, and control over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), Section 70-2-12 (enumerating powers of Commission and Oil Conservation Division (OCD)), and Section 70-2-14 (authorizing Commission to establish categories of financial assurance). The public hearing is governed by the Commission’s rule on rulemaking proceedings at 19.15.3 NMAC.

**Availability of Proposed Amendments.** The full text of the proposed amendments are available on OCD’s website at <http://www.emnrd.state.nm.us/OCD/rules.html> or may be obtained from Commission Clerk Sheila Apodaca at [occ.hearings@emnrd.nm.gov](mailto:occ.hearings@emnrd.nm.gov).

**Written Comments.** Any person may submit written comments on the proposed amendments no later than 5:00 pm on October 21, 2024, unless extended by the Commission, by mail or delivery to Sheila Apodaca, Commission Clerk, Wendell Chino Building, 1220 S. St. Francis Dr., Santa Fe,

NM 87505, or by email to the Commission Clerk at [occ.hearings@emnrd.nm.gov](mailto:occ.hearings@emnrd.nm.gov).

**Public Hearing.** The public hearing will be held in-person, online, and by telephone commencing on October 21, 2024 at 9:00 am and continuing each weekday thereafter as necessary. The hearing will be held in Pecos Hall on the first floor in the Wendell Chino Building at the address above. For information how to participate in the hearing, please contact the Commission Clerk at [occ.hearings@emnrd.nm.gov](mailto:occ.hearings@emnrd.nm.gov) or 505-699-8358, or visit the Hearings page on OCD's website at <http://www.emnrd.state.nm.us/OCD/hearings.html>. Public comment will be accepted each day of the hearing beginning at 9:00 am and at 4:00 pm.

**Proposed Modifications, Technical Testimony, and Cross-Examination.** Any person intending to propose a modification to the proposed amendments, to present technical testimony at the hearing, or to cross-examine witnesses must file a Pre-hearing Statement conforming to the requirements of 19.15.3.11.B NMAC, except that instead of filing a concise statement of each witness's testimony as required by 19.15.3.11.B(2) NMAC, the person shall file each witness's full testimony. Full direct testimony and exhibits shall be filed no later than 5:00 pm on August 26, 2024. Full rebuttal testimony and exhibits shall be filed no later than 5:00 pm on September 23, 2024. Filing may be accomplished by mail or delivery to Sheila Apodaca, Commission Clerk, Wendell Chino Building, 1220 S. St. Francis Dr., Santa Fe, NM 87505, or by email to the Commission Clerk at [occ.hearings@emnrd.nm.gov](mailto:occ.hearings@emnrd.nm.gov). Any person who presents technical testimony will be subject to cross-examination by the members of the Commission, the Commission's counsel, or another person who filed a Pre-hearing Statement.

**Oral Comments.** Any person who did not file a Pre-hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat testimony. Any person who presents sworn, non-technical testimony will be subject to cross-examination by the Commission, the Commission's counsel, or another person who has filed a Pre-hearing Statement.

**Persons with Disabilities.** If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, including a summary or other accessible form of document, please contact the Commission Clerk at [occ.hearings@emnrd.nm.gov](mailto:occ.hearings@emnrd.nm.gov) or 505-699-8358 or through the New Mexico Relay Network at 1-800-659-1779, no later than 5:00 pm on October 18, 2024.

**Technical Information.** Technical information that may be provided through Pre-hearing Statements and written technical testimony will be made publicly available on the OCD Imaging, Case File Search portal on OCD's website at <http://ocdimage.emnrd.state.nm.us/imaging/CaseFileCriteria.aspx>, and may be accessed by searching for Case File No. \_\_\_\_\_.