

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 297

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO NATURAL RESOURCES; PROVIDING REQUIREMENTS FOR
APPROVED INACTIVE STATUS OF WELLS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 70-2-14 NMSA 1978 (being Laws 1977,
Chapter 237, Section 3, as amended) is amended to read:

"70-2-14. REQUIREMENT FOR FINANCIAL ASSURANCE.--

A. Each person, firm, corporation or association
who operates any oil, gas or service well within the state
shall, as a condition precedent to drilling or producing the
well, furnish financial assurance in the form of an irrevocable
letter of credit or a cash or surety bond or a well-specific
plugging insurance policy pursuant to the provisions of this
section to the oil conservation division of the energy,
minerals and natural resources department running to the

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1 benefit of the state and conditioned that the well be plugged
2 and abandoned in compliance with the rules of the oil
3 conservation division. The oil conservation division shall
4 establish categories of financial assurance after notice and
5 hearing. Such categories shall include a blanket plugging
6 financial assurance in an amount not to exceed fifty thousand
7 dollars (\$50,000) and one-well plugging financial assurance in
8 amounts determined sufficient to reasonably pay the cost of
9 plugging the wells covered by the financial assurance. In
10 establishing categories of financial assurance, the oil
11 conservation division shall consider the depth of the well
12 involved, the length of time since the well was produced, the
13 cost of plugging similar wells and such other factors as the
14 oil conservation division deems relevant. In addition to the
15 blanket plugging financial assurance, the oil conservation
16 division may require a one-well financial assurance on any well
17 that has been held in a temporarily abandoned status for more
18 than two years or in inactive status for more than one year.
19 All financial assurance shall remain in force until released by
20 the oil conservation division. The oil conservation division
21 shall release financial assurance when it is satisfied the
22 conditions of the financial assurance have been fully
23 performed.

24 B. An operator of a well may place that well in
25 approved inactive status pursuant to this subsection for a

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underscored material = new
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1 maximum period of four years; provided that the operator has
2 financial assurance as set forth in Subsection A of this
3 section. The operator may place the well in approved inactive
4 status by submitting a written notice of intent within one year
5 of the well becoming inactive. The notice of intent shall
6 include a certification by the operator that the well has
7 future beneficial use and a certification by a professional
8 engineer that the wellbore has mechanical integrity sufficient
9 to ensure environmental protection throughout the inactive
10 period. The notice of intent shall also include an explanation
11 of how the mechanical integrity of the wellbore was determined,
12 the wellbore test results and all raw data. If the oil
13 conservation division determines that the information in the
14 notice of intent is insufficient to allow the well to remain in
15 approved inactive status or that the well has no beneficial use
16 or lacks mechanical integrity, then the oil conservation
17 division shall challenge the approved inactive status of the
18 well, set forth its findings in writing and provide the
19 operator sixty days to cure the deficiencies in information or
20 rebut the division's findings. If the operator fails to timely
21 correct the deficiencies or rebut the division's findings to
22 the division's satisfaction, then the operator shall return the
23 well to beneficial use, temporarily abandon the well or
24 permanently plug and abandon the well. The oil conservation
25 division shall consider the well to be in approved inactive

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1 status and in compliance until the end of the four-year period
2 or until such time as the division challenges the approved
3 inactive status and issues a final order requiring the operator
4 to return the well to beneficial use, temporarily abandon the
5 well or permanently plug and abandon the well, whichever comes
6 first.

7 ~~[B-]~~ C. If any of the requirements of the Oil and
8 Gas Act or the rules promulgated pursuant to that act have not
9 been complied with, the oil conservation division, after notice
10 and hearing, may order any well plugged and abandoned by the
11 operator or surety or both in accordance with division rules.
12 If the order is not complied with in the time period set out in
13 the order, the financial assurance shall be forfeited.

14 ~~[G-]~~ D. When any financial assurance is forfeited
15 pursuant to the provisions of the Oil and Gas Act or rules
16 promulgated pursuant to that act, the director of the oil
17 conservation division shall give notice to the attorney
18 general, who shall collect the forfeiture without delay.

19 ~~[D-]~~ E. All forfeitures shall be deposited in the
20 state treasury in the oil and gas reclamation fund.

21 ~~[E-]~~ F. When the financial assurance proves
22 insufficient to cover the cost of plugging oil and gas wells on
23 land other than federal land and funds must be expended from
24 the oil and gas reclamation fund to meet the additional
25 expenses, the oil conservation division is authorized to bring

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1 suit against the operator in the district court of the county
2 in which the well is located for indemnification for all costs
3 incurred by the oil conservation division in plugging the well.
4 All funds collected pursuant to a judgment in a suit for
5 indemnification brought under the provisions of this section
6 shall be deposited in the oil and gas reclamation fund.

7 ~~[F.]~~ G. An operator required to file financial
8 assurance for a well pursuant to this section is considered to
9 have met that requirement if the operator obtains a plugging
10 insurance policy that includes the specific well and that:

11 (1) is approved by the insurance division of
12 the public regulation commission;

13 (2) names the state of New Mexico as owner of
14 the policy and contingent beneficiary;

15 (3) names a primary beneficiary who agrees to
16 plug the specified wellbore;

17 (4) is fully prepaid and cannot be canceled or
18 surrendered;

19 (5) provides that the policy continues in
20 effect until the specified wellbore has been plugged;

21 (6) provides that benefits will be paid when,
22 but not before, the specified wellbore has been plugged in
23 accordance with rules of the oil conservation division in
24 effect at the time of plugging; and

25 (7) provides benefits that are not less than

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1 an amount equal to the one-well financial assurance required by
2 oil conservation division rules.

3 ~~[G.]~~ H. If, subsequent to an operator obtaining an
4 insurance policy as provided in this section, the one-well
5 financial assurance requirement applicable to the operator's
6 well is increased, either because the well is deepened or the
7 rules of the oil conservation division are amended, the
8 operator is considered to have met the revised requirement if:

9 (1) the existing policy benefit equals or
10 exceeds the revised requirement;

11 (2) the operator obtains an amendment
12 increasing the policy benefit by the amount of the increase in
13 the applicable financial assurance requirement; or

14 (3) the operator obtains financial assurance
15 equal to the amount, if any, by which the revised requirement
16 exceeds the policy benefit."