

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
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 AN OPPORTUNITY FOR
WELLS WITH FINANCIAL ASSURANCE TO BE PLACED IN INACTIVE STATUS
OR TEMPORARY ABANDONMENT STATUS.

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,

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

24 B. If the operator of a well has financial
25 assurance for that well as set forth in Subsection A of this

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1 section, the operator of a well shall have an opportunity to
2 place the well in inactive status or temporary abandonment
3 status. By December 31, 2011, the oil conservation division
4 shall promulgate and adopt new rules dealing with the inactive
5 status and temporary abandonment status of a well and new rules
6 dealing with enforcement and compliance. The new rules shall
7 be developed and adopted in accordance with a schedule approved
8 by the secretary of energy, minerals and natural resources, and
9 the schedule shall incorporate an opportunity for public input
10 and stakeholder negotiations. In adopting the new rules, the
11 oil conservation division shall consider whether the new rules:

12 (1) adequately address the time period for
13 which a well is granted approved temporary abandonment status
14 so as to provide an operator with a sufficient amount of time
15 to manage its portfolio of wells;

16 (2) prevent a well with future beneficial use
17 from being prematurely plugged and abandoned;

18 (3) require that a well is mechanically and
19 physically sound so as to provide a satisfactory level of
20 environmental protection that considers the individual
21 characteristics of the well, including location, age, well
22 design, current condition and repair history;

23 (4) allow for variations based on the size of
24 the operator; and

25 (5) are based on the best available scientific

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1 information.

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

9 ~~[G.]~~ D. When any financial assurance is forfeited
10 pursuant to the provisions of the Oil and Gas Act or rules
11 promulgated pursuant to that act, the director of the oil
12 conservation division shall give notice to the attorney
13 general, who shall collect the forfeiture without delay.

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

16 ~~[E.]~~ F. When the financial assurance proves
17 insufficient to cover the cost of plugging oil and gas wells on
18 land other than federal land and funds must be expended from
19 the oil and gas reclamation fund to meet the additional
20 expenses, the oil conservation division is authorized to bring
21 suit against the operator in the district court of the county
22 in which the well is located for indemnification for all costs
23 incurred by the oil conservation division in plugging the well.
24 All funds collected pursuant to a judgment in a suit for
25 indemnification brought under the provisions of this section

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1 shall be deposited in the oil and gas reclamation fund.

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

6 (1) is approved by the insurance division of the
7 public regulation commission;

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

10 (3) names a primary beneficiary who agrees to
11 plug the specified wellbore;

12 (4) is fully prepaid and cannot be canceled or
13 surrendered;

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

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

20 (7) provides benefits that are not less than an
21 amount equal to the one-well financial assurance required by
22 oil conservation division rules.

23 ~~[G.]~~ H. If, subsequent to an operator obtaining an
24 insurance policy as provided in this section, the one-well
25 financial assurance requirement applicable to the operator's

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1 well is increased, either because the well is deepened or the
2 rules of the oil conservation division are amended, the
3 operator is considered to have met the revised requirement if:

4 (1) the existing policy benefit equals or
5 exceeds the revised requirement;

6 (2) the operator obtains an amendment increasing
7 the policy benefit by the amount of the increase in the
8 applicable financial assurance requirement; or

9 (3) the operator obtains financial assurance
10 equal to the amount, if any, by which the revised requirement
11 exceeds the policy benefit."