19.2.100.23 BONDING.

A. Minimum Bond Requirements.

Before the commencement of development or operations, including prospecting, on an oil and gas lease, the lessee shall execute and file with the commissioner a good and sufficient bond, in an amount to be fixed by the commissioner but not less than one hundred fifty thousand dollars ($150,000), in favor of the commissioner and state land office for the benefit of the applicable trust beneficiary, and contract purchasers and surface lessees of the affected acreage, to protect the commissioner and state land office against damage to trust land, minerals, or other natural resources, and to ensure the lessee's compliance with lease obligations. Damage to state trust land includes but is not limited to the failure to plug inactive wells located on the lease acreage, remediate spills, and reclaim surface disturbance and damage to mineral resources and reservoirs. The bond shall be written on a form prescribed or approved by the commissioner. The surety must be certified by the United States Department of the Treasury to issue surety bonds and must be authorized to do business in New Mexico. The bond shall be non-cancellable.

B. Heightened Bond Requirements.

1. If a lease includes on its premises any of the following conditions, the commissioner may require the lessee to file an additional financial assurance, in an amount to be determined by the commissioner (not to exceed 100% of estimated applicable plugging, remediation, and reclamation costs):

a. An inactive well, i.e. a well for which no production or injection has been reported for a continuous period of one year or more, except for a well:
i. that has been in approved temporary abandonment status with the new mexico oil conservation division for a period of five years or less, but this exception shall not apply to any lessee or well operator which has 10% or more of all wells it operates on state trust lands in approved temporary abandonment status;
ii. that has received an approved shut-in from the commissioner; or
iii. that is on a lease and the lease has received an approved shut in from the commissioner.

b. A well that has produced 100 barrels of oil or less in the past year or the equivalent volume of gas; or

c. A release, whether or not reported to the oil conservation division, that has not been completely remediated pursuant to state land office rules and requirements within the latter of one year of occurrence or discovery, or one year from the effective date of this rule.

2. If any of the following conditions have occurred in the past ten years, the commissioner may require the lessee to file an additional financial assurance, in an amount to be determined by the commissioner (not to exceed 100% of estimated applicable plugging, remediation, and reclamation costs):

a. The commissioner has claimed the lessee's bond or other financial assurance filed with the commissioner to redress the lessee's compliance deficiencies;
b. The commissioner has filed suit against the lessee for failing to remedy damage to state trust land caused by oil and gas operations on a lease held by the lessee; or
c. The lessee is out of compliance with an agreed compliance order, stipulated final order, or other final order of the oil conservation division, or a final order of another agency of the State of New Mexico that pertains to the lessee's oil and gas operations.

3. In the commissioner's sole discretion, a lessee may defer the heightened bond requirement for a period of up to 90 days by committing to plug wells, remediate releases, or address other conditions that trigger the heightened bond requirement by a date agreeable to the commissioner. The deferment may be extended in the commissioner's sole discretion based on the lessee's progress addressing the compliance deficiencies.

4. In addition to the heightened bonding factors identified in (1) and (2), the commissioner may require a higher level of bonding on an individual lease basis, based on the commissioner's assessment of other factors pertinent to the lessee's oil and gas operations in New Mexico, the environmental condition or compliance status of the lease premises or other state leases held by the lessee, or significant changes in compliance costs.

5. In the event a higher level of bonding is required under any provision of this rule, the commissioner will provide written notice to the lessee of the required amount and the reasons for the higher bonding requirement.

C. **Bulk Bonds.** Lessees holding ten or more leases that are required under this rule to be secured by a bond may, with the commissioner's written approval, submit a single bond to cover multiple leases, according to the following schedule:

Between 2 and 9 leases: $150,000 per lease

Between 10 and 19 leases: $130,000 per lease
Between 20 and 49 leases: $110,000 per lease
Fifty or more leases: $100,000 per lease

In the event the commissioner accepts one or more bulk bonds from a particular lessee, the lessee shall provide a schedule listing all leases subject to the bulk bond, and the wells (regardless of operator) located on each lease. No lease that is subject to heightened bond requirements is eligible for inclusion in, or coverage under, a bulk bond.

D. Reporting and Notification Requirements.

1. Each lessee shall file an annual report on or before December 31 of each year, certified under penalty of perjury by a person with authority to bind the lessee, detailing the following, for each lease held by that lessee:

a. inventory of active and inactive wells on the lease, with reference to well name, API number, operator, date of last production, total reported oil production (in BBLs) and gas production (in MCF) reported during the previous 12 months, and whether the well is part of an oil and gas unit;

b. inventory of other fixed infrastructure on the lease acreage that is related to oil and gas lease operations, including but not limited to tank batteries, ponds, separators, but not including transient equipment such as vehicles;

c. list of any hydrocarbon or produced water releases on lease premises, whether or not reported to the oil conservation division, by reference to location (latitude/longitude coordinates), substance released, responsible party, and status of remediation, to the extent known by the lessee;

d. identification of any warning letters, notices of violation, fines, penalties, civil actions, criminal actions, or judgments issued or initiated by any governmental entity with respect to oil and gas operations on the lease premises, by reference to date, nature of the alleged violation or action, and issuing or initiating entity;

e. identification of any civil litigation not initiated by a governmental entity concerning or arising out of oil and gas operations on the lease premises;

f. demonstration of retirement planning including statement of assets dedicated to plugging, remediation, and reclamation costs, based on the projected life of the reservoir, age of infrastructure, and number of active, inactive, and low producing wells; and

g. identification of any wells plugged in the previous twelve months and the cost to plug, remediate, and reclaim the well, well pad, and associated areas of oil and gas operations (such as adjacent spills, tank batteries, and flowlines).

2. The commissioner may prescribe a form and submission format (e.g. web portal) for the annual report. To the extent there is no change from a prior year's report in any particular category or overall, the lessee may so certify in writing, under penalty of perjury, in lieu of filing a full report.

3. Lessees shall notify the state land office within 30 days of any change of name or change of address of a surety or financial institution issuing a letter of credit or in the event Lessee is informed of any cancellation or non-renewal of the financial assurance or the insolvency of the surety or other entity issuing the financial assurance.

4. Lessees shall reasonably cooperate with the commissioner's inquiries regarding all matters pertaining to state land office bond requirements or to the related reporting requirements of this rule.

E. Periodic Adjustment and Review of Bonding Levels.

1. The monetary amounts of all bonds shall be adjusted every five years for inflation based on the preceding calendar year's change in the consumer price index for All Urban Consumers (CPI-U), United States City Average for All Items, published by the United States Department of Labor. The effective date of the adjustment shall be January 1 of the sixth year (the first day following each five-year review cycle).

2. The commissioner will periodically, but no less than every five years, review the sufficiency of each lessee's bond(s). Factors the commissioner may consider include the status of the lease (e.g. number of active and inactive wells, lease acreage, number of operators on the lease), the compliance history of lessee with respect to the specific lease in question and other state land office instruments, and changes to actual or estimated costs of plugging, remediation, reclamation, and other compliance activities. In the event the commissioner determines a given bond is inadequate financial assurance to protect the state land office and applicable beneficiary, the commissioner shall send written notice to the lessee of the change and lessee shall have 60 days from the date of mailing to update its bond or other financial assurance. Failure of the commissioner to engage in bond sufficiency review of any particular lease or lessee in accordance with this paragraph shall not be evidence or an admission of the commissioner's acceptance of the lessee's current bond as adequate.

3. In the event that a well bond or other financial assurance on file with the new mexico oil conservation division would cover operations on a particular lease and the oil and gas act and new mexico oil conservation commission rules are changed to allow the commissioner to access such bond or other financial assurance, the commissioner may adjust downward the monetary value of the bond required under this rule by the amount of the bond or other financial assurance on file with the new mexico oil conservation division that is applicable to wells on state trust land.

F. Alternative Forms of Financial Assurance. In lieu of a surety bond, but in the same amounts and subject to the same substantive requirements set forth in this rule, with commissioner approval a lessee may post:

1. An irrevocable letter of credit, on a form prescribed or approved by the commissioner, issued by a federally-insured financial institution either doing business in New Mexico or that has agreed in writing to submit itself to the jurisdiction of New Mexico courts. Irrevocable letters of credit shall require the issuing bank to notify the commissioner in writing of any decision to not renew the letter of credit at least 120 days in advance, and shall provide the commissioner the right to redeem the letter of credit prior to non-renewal.

2. A cash deposit submitted to the commissioner, which shall be held in suspense unless and until the financial assurance is eligible for release or the commissioner makes a claim against the deposit.

3. Other alternative forms of financial assurance may be considered on a case-by-case basis, at the commissioner's sole discretion.

G. Waivers. A lessee may request a waiver of the bond requirement if the lessee does not intend to conduct or allow any development of oil and gas on the lease acreage, which is at the commissioner's sole discretion. Any request for a waiver must be made within 30 days of lease issuance or assignment. Waivers are not available for leases whose acreage contains producing or inactive wells, unremediated spills, or infrastructure related to oil and gas development from the lease acreage. In the event a lessee obtains a waiver, but then proceeds, or allows another to proceed, with oil and gas development on the lease, the lessee must so notify the state land office and post the required bond prior to commencement of such development within 30 days of commencing said development. In the event a lessee obtains a bond waiver, proceeds with oil and gas development on the lease, but fails to notify the state land office and post the required bond, the lessee shall be ineligible for any bond waiver for a period of at least five years.

H. Bond "Riders" Limited. The commissioner will not accept bond riders or amendments that change the name of the guarantor (the lessee), that change the scope of coverage, or that add multiple lessees to the same bond without specific written approval of the same. Lessees who under the pre-existing version of this rule are sharing a bond via rider shall obtain their own separate bonds in conformity with the phase-in schedule listed in subsection K.

I. Claims on Bonds.

1. The commissioner shall provide written notice to a lessee of any claim made against a surety bond, irrevocable letter of credit, or cash deposit on file with the commissioner, at the lessee's last address of record on file with the state land office's oil, gas, and minerals division. Such notification may be made by regular postal mail and no proof of delivery shall be required. The commissioner may, but has no obligation to, notify any party other than the surety or issuing financial institution, and lessee of record, regarding any bond claim.

2. In the event a bond or other financial assurance is paid out to the commissioner, the affected lease will be canceled unless, after the commissioner provides 30 days written notice by certified mail to the lessee, the lessee cures the default by posting a replacement bond or other form of financial assurance in conformity with this rule. The commissioner may require a higher or different form of financial assurance based on payment of the bond claim or other compliance deficiencies of the lessee.

3. In the event a surety (for a surety bond) or issuing bank (for a letter of credit) fails to respond to a claim against the bond or letter of credit within a reasonable period of time, or fails to honor a substantiated claim, the commissioner may reject the bond or letter of credit and require the lessee to obtain a new bond or other form of financial assurance within 30 days that is in conformity with this rule.

J. **Release of Bonds.** Bonds or other approved forms of financial assurance may only be released upon one of the following events: (1) the lessee first submits a substitute form of financial assurance in compliance with this rule and the commissioner approves the substitution; or (2) the lessee no longer holds any state oil and gas leases and the commissioner has confirmed there are no outstanding compliance or performance issues with respect to lessee's lease(s).

K. **Phase-in Schedule.** The requirements of this rule shall apply to all new oil and gas leases, or existing leases for which no good and sufficient bond acceptable to the commissioner has been filed (but which is required to be filed), immediately upon the effective date of the rule. The requirements of this rule shall become applicable to all oil and gas leases pre-existing the effective date of the rule, and for which a good and sufficient bond acceptable to the commissioner has been filed, according to the following schedule (the "Phase-In Schedule"):

1. Any lease subject to any heightened bond requirements shall be in compliance within 60 days of the effective date of this rule.

2. Lessees holding fifty or more oil and gas leases shall bring all their leases into compliance with this rule within 180 days of the effective date of the rule.

3. All other lessees shall bring their leases into compliance with this rule within 365 days of the effective date of the rule.

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